

September 16, 2020 at 7:00 p.m.

**If you need accommodations due to a disability to participate in this event, meeting, or activity, or alternative format of written materials contact Jeff Lynch, City of Emporia ADA Coordinator at least 48 hours before the event at 620-343-4285 or email jlynch@emporia-kansas.gov*

AGENDA ITEM SUMMARY

MEETING DATE: September 16, 2020

ITEM NUMBER: 2

SUBJECT: Mayor and City Commissioners Reports and Comments

RECOMMENDATION:

BACKGROUND SUMMARY

This is a time for the Mayor and City Commissioners to make comments and reports to the Public.
The following is general information for the month of August for the community:

1) Monthly Local Retail Sales Tax Receipts Update

	2019	2020	Increase of \$62,808.68 for the month, and Overall increase of 2.05% from year 2019
	\$394,063.87	\$456,872.55	
YTD	\$ 3,239,684.32	\$ 3,306,069.09	

2) City Share from County Tax

	2019	2020	Increase of \$32,447.35 for the month, and Overall increase of 5.80% from year 2019
	\$203,038.33	\$235,485.68	
YTD	\$ 1,597,765.41	\$ 1,609,463.03	

3) Building Permits issued from 8/1/2020 to 8/31/2020 for new construction, remodeling / repairs and demolition.

Total number of building permits issued through Code Services:	85
Total of valuations associated with those building permits:	\$ 8,585,950.00
Total number of dollars collected for Building Permit Fees:	\$ 25,870.00
Construct - single family dwellings	1
Demo - single family dwellings	0

Flint Hills Mall CID for August	\$ 20,215.25
Year to Date Total	\$ 135,558.28

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

MEETING DATE: September 16, 2020

ITEM NUMBER: 3

SUBJECT:

Consent agenda:

The items listed on the Consent Agenda are considered by the Governing Body to be routine business items.

Approval of the items may be made by a single motion, second and majority vote with no separate discussion of any item listed. Should a member of the Governing Body desire to discuss any item, at his/her request, it will be removed from the Consent Agenda and considered separately.

- a. Consider minutes of the Meeting held on September 2, 2020.
- b. Consider ratification of Payroll Ordinance for the period ending on September 11, 2020.
- c. Consider the Approval of August Budget.

RECOMMENDATION:

- a. Approve Minutes
- b. Approve Payroll
- c. Approve Budget

BACKGROUND SUMMARY:

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

MEETING DATE: September 16, 2020

ITEM NUMBER: 4

SUBJECT: Public Comment

RECOMMENDATION:

BACKGROUND SUMMARY:

Citizen Appearance Procedures

Presentations by individuals during "Citizen Appearance" portion of the Commission agenda shall be limited two minutes each. No personal attacks, comments or opinions shall be expressed or made against or about any member of the Commission, Mayor, City Employee, individual group or corporation.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

AGENDA ITEM SUMMARY

MEETING DATE: September 16, 2020

ITEM NUMBER: 5

SUBJECT: Public Hearing for CDBG Sewer Grant.

RECOMMENDATION: Conduct Public Hearing for CDBG Sewer Grant.

BACKGROUND SUMMARY:

As the commission is aware, the City has been working to complete the downtown sewer relining project. The project scope included relining and repair of approximately 25,900 linear feet of existing sewer mains. The next step in the process is to conduct a public hearing for the purpose of evaluating the performance of Grant #18-PF-005, which was for a sewer system improvements project within the City limits of Emporia, KS.

Our CDBG grant administrator Garrett Nordstrom and staff will be in attendance to answer any questions.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____



OFFICIAL AD PROOF

This is the proof of your ad scheduled to run in **The Emporia Gazette** on the dates indicated below.

If changes are needed, please contact us prior to deadline at (620) 342-4800.

Notice ID: MaHVWkfALEiLdkxdXrpd | **Proof Updated: Sep. 03, 2020 at 11:39am CDT**

Notice Name: Performance Public Hearing Notice

This is not an invoice.

FILER

Kerry Sull
ksull@emporia-kansas.gov

FILING FOR

City of Emporia

Columns Wide: 1

Ad Class: Legals

Sep. 5, 2020 - Custom \$35.72

Subtotal \$35.72

Tax % 0.00

Processing Fee \$3.57

Total \$39.29

(First Published in the Emporia Gazette
on September 05, 2020).

Performance Public Hearing Notice

The city of Emporia, KS will hold a public hearing on Wednesday, September 16th, 2020, at 7pm, in the City Commission Room located at 518 Mechanic, for the purpose of evaluating the performance of Grant No. 18-PF-005 which was for a Sewer System Improvements project within the city limits of Emporia, KS.

The scope of work completed mobilization, traffic control, CCTV inspection of 25,900 LF of existing sewer mains, and inspection of 59 existing manholes. The project also rehabilitated approximately 25,900 LF of 8", 10", 12" and 15" sewer main with a CIPP Liner process, as well as, performed rehabilitation/replacement on identified deficient manholes in the project area. Additional improvements completed included approximately 46 sewer main point repairs, 195 sewer service tap replacements within the project area as required, surface replacement and other related project cases.

All proposed activities were accomplished. This grant was funded, all or in part, from the Kansas Department of Commerce, Small Cities Community Development Block Grant (CDBG) funds. All aspects of the grant will be discussed, and oral and written comments will be recorded and become part of Emporia's CDBG Citizen Participation Plan. Reasonable accommodations will be made available to persons with disabilities. Requests should be submitted to the city clerk (620-342-5105) by September 15th, 2020.

AGENDA ITEM SUMMARY

MEETING DATE: September 16, 2020

ITEM NUMBER: 6

SUBJECT: Consider Resolution for Authority to Apply for CDBG Sewer Grant for Lift Station #2.

RECOMMENDATION: Approve Resolution Authorizing staff to Apply for the CDBG Sewer Grant.

BACKGROUND SUMMARY:

Staff have been working with our CDBG grant administrator to submit an application for a Kansas Department of Commerce Community Development Block Grant sewer project. The project is for improvements to Lift Station #2 and will include the replacement of two (2) flooded suction centrifugal wastewater pumps, valves and piping. The preliminary estimate for the project is \$1,703,200 with a grant request of \$700,000. The remaining \$1,003,200 in local matching funds will be contributed by the City of Emporia's KDHE-SRF loan.

The next step in the application process is to authorize staff to submit the application and execute all necessary documents. Our CDBG grant administrator Garrett Nordstrom will be in attendance to answer any questions.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

THE CITY/COUNTY OF EMPORIA, KANSAS

RESOLUTION NO. _____

RESOLUTION CERTIFYING LEGAL AUTHORITY
TO APPLY FOR THE 2021 KANSAS
SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
FROM THE KANSAS DEPARTMENT OF COMMERCE
AND AUTHORIZING THE MAYOR/COMMISSIONER
TO SIGN AND SUBMIT SUCH AN APPLICATION

WHEREAS, The City/County of Emporia, Kansas, is a legal governmental entity as provided by the laws of the STATE OF KANSAS, and

WHEREAS, The City/County of Emporia, Kansas, intends to submit an application for assistance from the COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

THE APPLICANT hereby certifies that the City/County of Emporia, Kansas, is a legal governmental entity under the status of the laws of the STATE OF KANSAS and thereby has the authority to apply for assistance from the KANSAS SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

THE APPLICANT hereby authorizes the MAYOR/COMMISSIONER of Emporia, Kansas, to act as the applicant's official representative in signing and submitting an application for the assistance to the COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

THE APPLICANT hereby dedicates \$1,003,200 in cash funds toward this project and \$0- in force account labor for same.

APPROVED BY THE GOVERNING BODY OF THE CITY/COUNTY OF EMPORIA, KANSAS, this _____ day of _____, 20____.

APPROVED _____
MAYOR/COMMISSIONER

ATTEST _____

(SEAL)

THE CITY/COUNTY OF EMPORIA, KANSAS

AGENDA ITEM SUMMARY

MEETING DATE: September 16, 2020

ITEM NUMBER: 7

SUBJECT: Consider Resolution for CDBG Sewer Grant for the Maintenance and Operation of Lift Station #2.

RECOMMENDATION: Approve Resolution for Maintenance and Operation.

BACKGROUND SUMMARY:

Staff have been working with our CDBG grant administrator to submit an application for a Kansas Department of Commerce Community Development Block Grant sewer project. The project is for improvements to Lift Station #2 and will include the replacement of two (2) flooded suction centrifugal wastewater pumps, valves and piping.

A requirement of the CDBG grant is to pass a Resolution of Maintenance and Operation. The resolution states funds will be continually provided for the operations and maintenance of improvements to the sewer system that are financed with community development block grant funds. Our CDBG grant administrator Garrett Nordstrom and staff will be in attendance to answer any questions.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

CITY/COUNTY OF EMPORIA, KANSAS

RESOLUTION NO. _____

A RESOLUTION ASSURING THE KANSAS DEPARTMENT OF COMMERCE THAT FUNDS WILL BE CONTINUALLY PROVIDED FOR THE OPERATION AND MAINTENANCE OF IMPROVEMENTS TO THE SEWER SYSTEM TO BE FINANCED WITH COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

WHEREAS, The City/County of Emporia is applying for Small Cities Community Development Block Grant funds under the Water/Sewer Category, as administered by the Kansas Department of Commerce; and,

WHEREAS, The City/County of Emporia wishes to utilize this funding for the purpose of constructing improvements to the city's/county's sewer system, as described in the Community Development Block Grant application submitted to the Kansas Department of Commerce; and,

WHEREAS, The City/County of Emporia has determined that the annual operation and maintenance costs of the sewer system improvements are anticipated to be approximately \$30,000; and,

WHEREAS, The annual sewer budget has been determined to be adequate to fund the operation and maintenance of the sewer system,

NOW, THEREFORE, BE IT RESOLVED THAT: The Governing Body of the City/County of Emporia, Kansas, hereby assures the Kansas Department of Commerce that sufficient funds will be provided for the continued operation and maintenance of the above described improvement; that these operation and maintenance costs will be reviewed annually; and that the budget will be adjusted, when necessary, to reflect and cover any increase in costs.

ADOPTED BY THE GOVERNING BODY OF THE CITY/COUNTY OF EMPORIA, KANSAS THIS ____ DAY OF _____, 20____.

ATTEST:

MAYOR/COMMISSIONER

CITY CLERK/COUNTY CLERK

(SEAL)

AFFIDAVIT OF PUBLICATION

The Emporia Gazette
517 Merchant St.
(620) 342-4800

I, Bettina Shank, of lawful age, being duly sworn upon oath, deposes and says that I am the Operations Manager of The Emporia Gazette, a publication that is a "legal newspaper" as that phrase is defined for the city of Emporia, for the County of Lyon, in the state of Kansas, and that the attachment hereto contains the correct copy of what was published in said legal newspaper in consecutive issues on the following dates:

PUBLICATION DATES:

Aug. 25, 2020

Notice ID: G8aJummwvnyemey1lz4CU

Notice Name: Community Improvement Application

PUBLICATION FEE: \$45.50

Bettina Shank
Operations Manager

VERIFICATION

STATE OF KANSAS
COUNTY OF LYON



LISA M. STUEVE
NOTARY PUBLIC
STATE OF KANSAS
My Appl. Exp. 4-10-2023

Signed or attested before me on this

28th day of *August*, A.D. 20*21*.

J. M. Arneal
Notary Public

(First Published in the Emporia Gazette on August 25, 2020).

**Community Improvement Application
Public Hearing Notice**

The city of Emporia, KS will hold a public hearing on Wednesday, September 2nd, 2020, at 1:30pm, in the City Commission Room located at 518 Mechanic, for the purpose of considering an application to be submitted to the Kansas Department of Commerce for Small Cities Community Development Block Grant funds under the Water and Sewer category.

A specific project application to be discussed is a Lift Station #2 Improvements Project, which will include the replacement of two flooded suction style centrifugal solids handling wastewater pumps, interior piping and valve replacement, electrical and HVAC improvements, back-up generator installation, mechanical bar screen installation, exterior building improvements, replacement of security fence, controls and communication improvements, and miscellaneous improvements related to construction activities. The work will substantially improve the efficiency and reliability of the wastewater pumping operations at this facility. All improvements will occur near Lift Station #2 located at 1304 East St and within the city limits of Emporia, KS.

The estimated total project cost is \$1,703,200 with the grant request for \$700,000 of the project cost. The remaining \$1,003,200 in local matching funds will be contributed by the city of Emporia as a KDHE-SRF loan. Other project proposals introduced at the hearing will be considered. Oral and written comments will be recorded and become part of Emporia's CDBG Citizen Participation Plan. Reasonable accommodations will be made available to persons with disabilities. Requests should be submitted to the city clerk (620-342-5105) by September 1st, 2020.

AGENDA ITEM SUMMARY

MEETING DATE: September 16, 2020

ITEM NUMBER: 8

SUBJECT: Consider Approval of Contracts with BG Consultants for design of FEMA related projects.

RECOMMENDATION: Staff recommends the approval of the contracts with BG Consultants for the migration design of the S. Arundel Sanitary Sewer Improvements (\$271,500.00), Neosho River Raw Water Intake (\$216,660.00) and the Neosho River Low Water Dam (\$202,900.00)

BACKGROUND SUMMARY:

Due to flooding in the summer of 2019, we had several city facilities damaged. City staff is currently working with the Kansas Department Emergency Management to get the projects approved by FEMA. The projects that have been submitted are; South Arundel Sewer Line, Water Plant Raw Water Intake and the Neosho Low Water Dam. BG Consultants will be contracted to design the mitigation portion of the each of the following projects:

The S. Arundel Sanitary Sewer Improvements project includes two (2) aerial crossings, one of which had a section of pipe damaged and allowed sewage to run into the Cottonwood River. On the other, the supports were damaged and need to be repaired. The damaged area was temporarily repaired; however, it will need a long-term repair to help prevent further damage. We would like to request that FEMA help with mitigation so the aerial crossings are eliminated altogether, and so that another section of the same pipe (located just east of Prairie St) can be better anchored to help prevent line damage in the future. The design portion of this project will cost \$271,500.00 with 85% of the cost being reimbursed by FEMA.

The Neosho River Raw Water Intake has rock riprap, on the bank of the Neosho River, on the east and west sides of the structure. Some of the rock has moved, due to the flooding, and needs to be replaced to help ensure that the bank and structure are not damaged in future floods. Mitigation on this project changes how the rock riprap is placed around the structure and increases the armoring to better protect the raw water intake. The design portion of this project will cost \$216,660.00 with 85% of the cost being reimbursed by FEMA.

The Neosho River Low Water Dam is one (1) of three (3) dams that are owned by the city on the Neosho River. The south abutment had large masonry stones washed downstream. This has exposed the abutment to further, possibly more catastrophic, damage in future floods. Mitigation on this project will armor the upstream bank and the downstream wing wall to help prevent/slow future damage. The design portion of this project will cost \$202,900.00 with 85% of the cost being reimbursed by FEMA.

Projects will be funded internally, with reimbursements expected within 6 months of submittal of pay requests.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____



AGREEMENT CONSULTANT-CLIENT

THIS AGREEMENT made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and City of Emporia, KS, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

2020 S. Arundel Sanitary Sewer Improvements
Preliminary Engineering and Construction Engineering Services
Emporia, KS 66801

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 “Additional Services” means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.
- 1.2 “Agreement” means this contract and includes change orders issued in writing.
- 1.3 “CLIENT” or “CLIENT” means the agency, business or person identified on page 1 as “CLIENT” and is responsible for ordering and payment for work on this project.
- 1.4 “CONSULTANT” or “CONSULTANT” means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 “Contract Documents” means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 “Engineering Documents” or “Architectural Documents” or “Survey Documents” means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.

- 1.7 “Consulting Services” or “Engineering Services” or “Architectural Services” or “Survey Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 “Services” is a description of the required work as shown in **Exhibit 1**.
- 1.9 “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

- 2.1 **SCOPE OF SERVICES:** The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

2.2 GENERAL DUTIES AND RESPONSIBILITIES

- 2.2.1. **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name:	Bruce Boettcher
Address:	2508 W. 15 th Ave.
	Emporia, KS 66801
Phone:	620.343.7842

- 2.2.2. **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT’S profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.
- 2.2.3. **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the CLIENT.
- 2.2.4. **Insurance:** CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker’s compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance and (iv) Professional liability insurance.
- 2.2.5. **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the CLIENT and the CLIENT will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm’s work. The CLIENT will pay the Geotechnical firm separately from this Agreement.

- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the CLIENT and performed by a third party, other than the CONSULTANT or their subCONSULTANTS in connection with the proposed Project, shall be contracted for and paid for by the CLIENT directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties. Where any design services are provided by persons or entities not under CONSULTANT'S direct control, CONSULTANT'S role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT'S design and portion of the project. Except to the extent it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.
- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the CLIENT regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.10. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.
- 2.2.11. **No Fiduciary Duty:** The CONSULTANT shall perform its services consistent with the professional skill and care ordinarily provided by CONSULTANTS practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The CONSULTANT shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. CONSULTANT makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with CONSULTANT'S services. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified. The CONSULTANT shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship.

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

- 3.1.1. **Communication:** The CLIENT shall provide to the CONSULTANT information and criteria regarding the CLIENT's requirement for the Project; examine and respond in a timely manner to the CONSULTANT'S submissions and give notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. Our review and use of the information will be to the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the CONSULTANT to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT's responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT's objectives, schedule, budget with reasonable contingencies and necessary design criteria so that CONSULTANT is able to fully understand the project requirements.
- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: Dean Grant
Address: 1220 Hatcher St.
Emporia, KS 66801
Phone: 620.340.6335

- 3.1.8. **Billing Contact:** In this section, the CLIENT will identify the billing contact and address. The CONSULTANT will submit invoices according to this contract to the CLIENT's billing contact at the address shown:

Name: Dean Grant
Address: 1220 Hatcher St.
Emporia, KS 66801
Phone: 620.340.6335

SECTION 4 – PAYMENT

4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a Lump Sum Fee according to **Exhibit 2** of this Agreement for Preliminary Engineering Services. The Lump Sum Fee for Preliminary Engineering is a total of \$151,500.00 Dollars plus reimbursable expenses as outlined in **Exhibit 2** and for the Scope of Services as shown in

Exhibit 1 of this Agreement. Payment of the Lump Sum Fee and reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.

- 4.1.2. **Construction Engineering Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on Construction Engineering at the rates indicated in the attached Fee Schedule; **Exhibit 2** and the actual reimbursable expenses permitted under this Agreement and incurred on the Project, but not to exceed a maximum fee of \$120,000.00 Dollars. This fee is based on the scope of Services outlined in **Exhibit 1** of this Agreement. Payment of the Professional Fees and reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.3. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of BG CONSULTANTS, Inc. standard hourly rate schedule in effect at the time of services, unless stated otherwise in a properly executed addendum to this contract for Additional Services. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.4. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.
- 4.1.5. **Reimbursable Expenses:** An estimate of reimbursable expenses plus ten (10) percent shall be included in the total estimate of cost for this project and as shown in **Exhibit 2**. Total estimated cost is calculated as Lump Sum plus reimbursable expenses plus ten (10) percent. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.
- 4.1.6. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.7. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall state the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT'S invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.8. **Timing of Services:** CONSULTANT will perform the Services according to **Exhibit 2**. However, if during their performance, for reasons beyond the control of the CONSULTANT,

delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays. CONSULTANT will endeavor to start its services on the anticipated start date and continue to endeavor to complete its services according to the schedule indicated in Exhibit 2. The start date, completion date and any milestone for project delivery are approximate only and CONSULTANT reserves the right to adjust its schedule and all of those dates at its sole discretion for delays caused by the CLIENT, Owner or third parties.

- 4.1.9. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT'S standard hourly rates. Provided, however, that any increase in contract price or contract time must be requested by the CONSULTANT and must be approved through a written supplemental agreement prior to performing such services. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT'S negligence, error or omission.
- 4.1.10. **Additional Services:** The CONSULTANT shall provide, with the CLIENT's concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, and an hourly or lump sum fee adjustment. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the mutually agreed adjustment to the CONSULTANT'S fee. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.
- 4.1.11. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on failure of CLIENT to make payments or any material breach by the CLIENT.

If the CLIENT fails to make payments to the CONSULTANT in accordance with this Agreement or fails to meet its other material responsibilities under this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the CONSULTANT'S option, cause for suspension of performance of services under this

Agreement. If the CONSULTANT elects to suspend services, the CONSULTANT shall give seven (7) days' written notice to the CLIENT before suspending services. In the event of a suspension of services, the CONSULTANT shall have no liability to the CLIENT for delay or damage caused the CLIENT because of such suspension of services. Before resuming services, the CONSULTANT shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTANT'S services. The CONSULTANT'S fees for the remaining services and the time schedules shall be equitably adjusted.

5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.

5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its subCONSULTANT, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

5.2 DISPUTE RESOLUTION

5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

5.3.1. All documents prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT'S professional service, and CONSULTANT shall retain ownership and property interest therein, including all copyrights. Upon payment for services rendered, CONSULTANT grants CLIENT a license to use instruments of CONSULTANT'S professional service for the purpose of constructing, occupying, or maintaining the project. Reuse or modification of any such documents by CLIENT, without CONSULTANT'S written permission, shall be at CLIENT's sole risk, and CLIENT agrees to indemnify, defend, and hold CONSULTANT harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by CLIENT or by others acting through CLIENT.

5.4 INDEMNIFY AND HOLD HARMLESS

5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand, or cause of action to the extent caused by: (i) CLIENT's breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.

- 5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and hold harmless CONSULTANT from and against loss, damage, or injury attributable to personal injury or property damage to the extent caused by such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG CONSULTANTS, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.
- 5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or incurred by the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.
- 5.5 ENTIRE AGREEMENT
- 5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.
- 5.6 APPLICABLE LAW
- 5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.
- 5.7 ASSIGNMENT OF AGREEMENT
- 5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.
- 5.8 NO THIRD PARTY BENEFICIARIES
- 5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.
- 5.9 LIMITATION OF LIABILITY
- 5.9.1. CLIENT's exclusive remedy for any alleged breach of standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.
- 5.9.2. CLIENT agrees that any claim for damages filed against CONSULTANT by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against CONSULTANT or its successors or assigns and that no individual person shall be made personally liable for damages in whole or in part.
- 5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which

damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

5.10 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.11 TITLES, SUBHEADS AND CAPITALIZATION

5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5.12 SEVERABILITY CLAUSE

5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.13 FIELD REPRESENTATION

5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that CONSULTANT'S Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.14 HAZARDOUS MATERIALS

5.14.1. The CONSULTANT and the CONSULTANT'S subCONSULTANTs shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this _____ day

of _____, 20__20__.

CONSULTANT:

BG CONSULTANTs, Inc.

By: _____

Printed Name: Bruce Boettcher

Title: Vice President

CLIENT:

City of Emporia, KS

By: _____

Printed Name: _____

Title: _____

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1
SCOPE OF SERVICES

Project: S. Arundel & West Crossing Improvements
Owner: City of Emporia, Kansas
Engineer: BG Consultants, Inc.

The Professional Services to be performed under this section are as follows:

A. PRELIMINARY ENGINEERING:

1. Consult with CLIENT and Staff to coordinate each major section of the project development and design. These meetings may be formal council meetings and/or informal staff meetings, as deemed necessary by the CLIENT related to the lift station rehabilitation and improvements.
2. Complete informational gathering by the field and office research for the project.
3. Assist CLIENT with the solicitation and selection of a geotechnical firm to investigate underground field conditions. The CLIENT will contract directly with the geotechnical firm. Geotechnical services are not included in this contract.
4. Consult with the CLIENT and regulatory agencies concerning the construction documents and requirements covering specific items of design.
5. Design S. Arundel and West Crossing improvements as outlined in technical memo dated 8/26/20 and EOPC dated 8/28/20 (BG project # 19-1334E - attached).
6. Prepare preliminary and final estimates of probable construction cost for the CLIENT.
7. Prepare preliminary plans to be reviewed by the CLIENT and the Kansas Department of Health and Environment (KDHE).
8. After review of the preliminary plans by the CLIENT and KDHE, prepare final plans and specifications for the proposed construction work.

9. Construction plans, details and project specifications shall be prepared by using BG CONSULTANTS, Inc. standards.

B. CONSTRUCTION ENGINEERING:

1. Bid Letting Services: Provide assistance of bid letting and contract preparation to assist the CLIENT in the open bidding process and selection of a contractor.
 - a. Answer questions from contractors regarding the final plans. If necessary, issue requested addenda.
 - b. If requested by the CLIENT, attend and chair a pre-bid meeting to explain conditions or designs and to answer questions regarding the plans.
 - c. Attend the bid letting, tabulate bids and provide a recommendation for award.
2. Construction Engineering & Resident Project Representative: Provide Resident Project Representative (RPR) services as outlined and defined in Exhibit A (attached).
 - a. Review the contractor's submittals and submit written opinion of plan and specification compliance.
 - b. Perform construction engineering and RPR services for the work being performed by contractor.
 - c. Compile logs for site visits and project monitoring.
 - d. Coordinate construction observation activities with the CLIENT.
 - e. Prepare project performance certifications as required.
 - f. Prepare "Record Drawings" from construction installation "As Built" information provided by the contractor.

C. SUPPLEMENTAL/ADDITIONAL SERVICES

1. Items listed in this section, as requested by the CLIENT, will require additional work by the CONSULTANT outside of the agreements scope of services.
2. Establishment of Right-of-Way or Easements required for the project.

3. Provide Right-of-Way, Permanent Easements and/or Temporary Easements descriptions, if needed.
4. Administration for obtaining appraisals or filing easements and the cost thereof.
5. Changes in the general scope, extent, or character of the project or its design, including but not limited to changes in size, complexity, schedule, character of construction or method of financing; and revising previously accepted studies, reports, or design documents when such revisions are required by changes in laws, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies/reports/documents or designs or due to any other causes beyond the CONSULTANT'S control.

End Exhibit 1

EXHIBIT 2
COST AND SCHEDULE

Professional services set forth in Exhibit 1 **Preliminary Engineering** items 1 through 9 the LUMP SUM FEE of **\$151,500.00**. Billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. Reimbursable expenses will not be billed unless requested and authorized by the CLIENT.

Services will be performed in an effort to meet City funding requirements including the following milestones:

The fee included within this contract is based upon the preliminary engineering being accomplished within **three calendar months** from the Notice To Proceed with work.

Construction Engineering services set forth in Section B items 1 through 2, the HOURLY FEE of **\$120,000.00**. Billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. Reimbursable expenses will not be billed unless requested and authorized by the CLIENT.

The fee included within this contract is based upon construction being accomplished within **80 working** days. Construction duration beyond this duration may result in additional fees. Additional fees associated with construction duration would require CLIENT approval, as appropriate, and would be identified in a supplement to this agreement.

Additional Services set forth in Exhibit 1, Section C will be billed hourly, as requested by the CLIENT, at standard hourly rates. All billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. The out-of-pocket expenses, material and mileage directly related to the CONSULTANT'S performance of this agreement shall be included in the Not To Exceed fee.

Total Estimated Fees = \$271,500.00

End Exhibit 2

EXHIBIT 3
SPECIAL PROVISIONS

1. Construction Engineering & Resident Project Representative Services:
Exhibit A (attached)
2. Attached is 2020 Standard Hourly Rates for BG CONSULTANTS, Inc.
(attached).

End Exhibit 3



AGREEMENT CONSULTANT-CLIENT

THIS AGREEMENT made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and City of Emporia, KS, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

2020 Neosho River Raw Water Intake Improvements
Preliminary Engineering and Construction Engineering Services
Emporia, KS 66801

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 “Additional Services” means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.
- 1.2 “Agreement” means this contract and includes change orders issued in writing.
- 1.3 “CLIENT” or “CLIENT” means the agency, business or person identified on page 1 as “CLIENT” and is responsible for ordering and payment for work on this project.
- 1.4 “CONSULTANT” or “CONSULTANT” means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 “Contract Documents” means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 “Engineering Documents” or “Architectural Documents” or “Survey Documents” means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.

- 1.7 “Consulting Services” or “Engineering Services” or “Architectural Services” or “Survey Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 “Services” is a description of the required work as shown in **Exhibit 1**.
- 1.9 “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

- 2.1 **SCOPE OF SERVICES:** The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

2.2 GENERAL DUTIES AND RESPONSIBILITIES

- 2.2.1. **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name:	Bruce Boettcher
Address:	2508 W. 15 th Ave.
	Emporia, KS 66801
Phone:	620.343.7842

- 2.2.2. **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT’S profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.
- 2.2.3. **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the CLIENT.
- 2.2.4. **Insurance:** CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker’s compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance and (iv) Professional liability insurance.
- 2.2.5. **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the CLIENT and the CLIENT will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm’s work. The CLIENT will pay the Geotechnical firm separately from this Agreement.

- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the CLIENT and performed by a third party, other than the CONSULTANT or their SUBCONSULTANTS in connection with the proposed Project, shall be contracted for and paid for by the CLIENT directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties. Where any design services are provided by persons or entities not under CONSULTANT'S direct control, CONSULTANT'S role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT'S design and portion of the project. Except to the extent it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.
- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the CLIENT regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.10. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.
- 2.2.11. **No Fiduciary Duty:** The CONSULTANT shall perform its services consistent with the professional skill and care ordinarily provided by CONSULTANTS practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The CONSULTANT shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. CONSULTANT makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with CONSULTANT'S services. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified. The CONSULTANT shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship.

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

- 3.1.1. **Communication:** The CLIENT shall provide to the CONSULTANT information and criteria regarding the CLIENT'S requirement for the Project; examine and respond in a timely manner to the CONSULTANT'S submissions and give notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. Our review and use of the information will be to the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the CONSULTANT to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT'S responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT'S objectives, schedule, budget with reasonable contingencies and necessary design criteria so that CONSULTANT is able to fully understand the project requirements.
- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: Dean Grant
Address: 1220 Hatcher St.
Emporia, KS 66801
Phone: 620.340.6335

- 3.1.8. **Billing Contact:** In this section, the CLIENT will identify the billing contact and address. The CONSULTANT will submit invoices according to this contract to the CLIENT'S billing contact at the address shown:

Name: Dean Grant
Address: 1220 Hatcher St.
Emporia, KS 66801
Phone: 620.340.6335

SECTION 4 – PAYMENT

4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a Lump Sum Fee according to **Exhibit 2** of this Agreement for Preliminary Engineering Services. The Lump Sum Fee for Preliminary Engineering is a total of \$126,660.00 Dollars plus reimbursable expenses as outlined in **Exhibit 2** and for the Scope of Services as shown in

Exhibit 1 of this Agreement. Payment of the Lump Sum Fee and reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.

- 4.1.2. **Construction Engineering Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on Construction Engineering at the rates indicated in the attached Fee Schedule; **Exhibit 2** and the actual reimbursable expenses permitted under this Agreement and incurred on the Project, but not to exceed a maximum fee of \$90,000.00 Dollars. This fee is based on the scope of Services outlined in **Exhibit 1** of this Agreement. Payment of the Professional Fees and reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.3. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of BG Consultants, Inc. standard hourly rate schedule in effect at the time of services, unless stated otherwise in a properly executed addendum to this contract for Additional Services. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.4. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.
- 4.1.5. **Reimbursable Expenses:** An estimate of reimbursable expenses plus ten (10) percent shall be included in the total estimate of cost for this project and as shown in **Exhibit 2**. Total estimated cost is calculated as Lump Sum plus reimbursable expenses plus ten (10) percent. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.
- 4.1.6. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.7. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall state the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT'S invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.8. **Timing of Services:** CONSULTANT will perform the Services according to **Exhibit 2**. However, if during their performance, for reasons beyond the control of the CONSULTANT,

delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays. CONSULTANT will endeavor to start its services on the anticipated start date and continue to endeavor to complete its services according to the schedule indicated in Exhibit 2. The start date, completion date and any milestone for project delivery are approximate only and CONSULTANT reserves the right to adjust its schedule and all of those dates at its sole discretion for delays caused by the CLIENT, Owner or third parties.

- 4.1.9. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT'S standard hourly rates. Provided, however, that any increase in contract price or contract time must be requested by the CONSULTANT and must be approved through a written supplemental agreement prior to performing such services. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT'S negligence, error or omission.
- 4.1.10. **Additional Services:** The CONSULTANT shall provide, with the CLIENT'S concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, and an hourly or lump sum fee adjustment. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the mutually agreed adjustment to the CONSULTANT'S fee. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.
- 4.1.11. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on failure of CLIENT to make payments or any material breach by the CLIENT.

If the CLIENT fails to make payments to the CONSULTANT in accordance with this Agreement or fails to meet its other material responsibilities under this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the CONSULTANT'S option, cause for suspension of performance of services under this

Agreement. If the CONSULTANT elects to suspend services, the CONSULTANT shall give seven (7) days' written notice to the CLIENT before suspending services. In the event of a suspension of services, the CONSULTANT shall have no liability to the CLIENT for delay or damage caused the CLIENT because of such suspension of services. Before resuming services, the CONSULTANT shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTANT'S services. The CONSULTANT'S fees for the remaining services and the time schedules shall be equitably adjusted.

- 5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.
- 5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
- 5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its SUBCONSULTANT, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

- 5.3.1. All documents prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT'S professional service, and CONSULTANT shall retain ownership and property interest therein, including all copyrights. Upon payment for services rendered, CONSULTANT grants CLIENT a license to use instruments of CONSULTANT'S professional service for the purpose of constructing, occupying, or maintaining the project. Reuse or modification of any such documents by CLIENT, without CONSULTANT'S written permission, shall be at CLIENT'S sole risk, and CLIENT agrees to indemnify, defend, and hold CONSULTANT harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by CLIENT or by others acting through CLIENT.

5.4 INDEMNIFY AND HOLD HARMLESS

- 5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand, or cause of action to the extent caused by: (i) CLIENT'S breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.

5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and hold harmless CONSULTANT from and against loss, damage, or injury attributable to personal injury or property damage to the extent caused by such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG CONSULTANTS, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.

5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or incurred by the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.

5.5 ENTIRE AGREEMENT

5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

5.6 APPLICABLE LAW

5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

5.7 ASSIGNMENT OF AGREEMENT

5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

5.8 NO THIRD PARTY BENEFICIARIES

5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

5.9 LIMITATION OF LIABILITY

5.9.1. CLIENT'S exclusive remedy for any alleged breach of standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.

5.9.2. CLIENT agrees that any claim for damages filed against CONSULTANT by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against CONSULTANT or its successors or assigns and that no individual person shall be made personally liable for damages in whole or in part.

5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which

damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

5.10 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.11 TITLES, SUBHEADS AND CAPITALIZATION

5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5.12 SEVERABILITY CLAUSE

5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.13 FIELD REPRESENTATION

5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that CONSULTANT'S Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.14 HAZARDOUS MATERIALS

5.14.1. The CONSULTANT and the CONSULTANT'S SUBCONSULTANTS shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this _____ day

of _____, 2020.

CONSULTANT:

CLIENT:

BG Consultants, Inc.

City of Emporia, KS

By: _____

By: _____

Printed Name: Bruce Boettcher

Printed Name: _____

Title: Vice President

Title: _____

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1
SCOPE OF SERVICES

Project: Neosho River Raw Water Intake Improvements
Owner: City of Emporia, Kansas
Engineer: BG Consultants, Inc.

The Professional Services to be performed under this section are as follows:

A. PRELIMINARY ENGINEERING:

1. Consult with CLIENT and Staff to coordinate each major section of the project development and design. These meetings may be formal council meetings and/or informal staff meetings, as deemed necessary by the CLIENT related to the lift station rehabilitation and improvements.
2. Complete informational gathering by the field and office research for the project.
3. Assist CLIENT with the solicitation and selection of a geotechnical firm to investigate underground field conditions. The CLIENT will contract directly with the geotechnical firm. Geotechnical services are not included in this contract.
4. Consult with the CLIENT and regulatory agencies concerning the construction documents and requirements covering specific items of design.
5. Design Neosho River Raw Water Intake improvements as outlined in technical memo dated 8/26/20 and EOPC dated 8/27/20 (BG project # 19-1334E - attached).
6. Prepare preliminary and final estimates of probable construction cost for the CLIENT.
7. Prepare preliminary plans to be reviewed by the CLIENT and the Kansas Department of Health and Environment (KDHE).
8. After review of the preliminary plans by the CLIENT and KDHE, prepare final plans and specifications for the proposed construction work.

9. Construction plans, details and project specifications shall be prepared by using BG Consultants, Inc. standards.

B. CONSTRUCTION ENGINEERING:

1. Bid Letting Services: Provide assistance of bid letting and contract preparation to assist the CLIENT in the open bidding process and selection of a contractor.
 - a. Answer questions from contractors regarding the final plans. If necessary, issue requested addenda.
 - b. If requested by the CLIENT, attend and chair a pre-bid meeting to explain conditions or designs and to answer questions regarding the plans.
 - c. Attend the bid letting, tabulate bids and provide a recommendation for award.
2. Construction Engineering & Resident Project Representative: Provide Resident Project Representative (RPR) services as outlined and defined in Exhibit A (attached).
 - a. Review the contractor's submittals and submit written opinion of plan and specification compliance.
 - b. Perform construction engineering and RPR services for the work being performed by contractor.
 - c. Compile logs for site visits and project monitoring.
 - d. Coordinate construction observation activities with the CLIENT.
 - e. Prepare project performance certifications as required.
 - f. Prepare "Record Drawings" from construction installation "As Built" information provided by the contractor.

C. SUPPLEMENTAL/ADDITIONAL SERVICES

1. Items listed in this section, as requested by the CLIENT, will require additional work by the CONSULTANT outside of the agreements scope of services.
2. Establishment of Right-of-Way or Easements required for the project.

3. Provide Right-of-Way, Permanent Easements and/or Temporary Easements descriptions, if needed.
4. Administration for obtaining appraisals or filing easements and the cost thereof.
5. Changes in the general scope, extent, or character of the project or its design, including but not limited to changes in size, complexity, schedule, character of construction or method of financing; and revising previously accepted studies, reports, or design documents when such revisions are required by changes in laws, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies/reports/documents or designs or due to any other causes beyond the CONSULTANT'S control.

End Exhibit 1

EXHIBIT 2
COST AND SCHEDULE

Professional services set forth in Exhibit 1 **Preliminary Engineering** items 1 through 9 the LUMP SUM FEE of **\$126,660.00**. Billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. Reimbursable expenses will not be billed unless requested and authorized by the CLIENT.

Services will be performed in an effort to meet City funding requirements including the following milestones:

The fee included within this contract is based upon the preliminary engineering being accomplished within **four calendar months** from the Notice To Proceed with work.

Construction Engineering services set forth in Section B items 1 through 2, the HOURLY FEE of **\$90,000.00**. Billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. Reimbursable expenses will not be billed unless requested and authorized by the CLIENT.

The fee included within this contract is based upon construction being accomplished within **60 working** days. Construction duration beyond this duration may result in additional fees. Additional fees associated with construction duration would require CLIENT approval, as appropriate, and would be identified in a supplement to this agreement.

Additional Services set forth in Exhibit 1, Section C will be billed hourly, as requested by the CLIENT, at standard hourly rates. All billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. The out-of-pocket expenses, material and mileage directly related to the CONSULTANT'S performance of this agreement shall be included in the Not To Exceed fee.

Total Estimated Fees = \$216,660.00

End Exhibit 2

EXHIBIT 3
SPECIAL PROVISIONS

1. Construction Engineering & Resident Project Representative Services:
Exhibit A (attached)
2. Attached is 2020 Standard Hourly Rates for BG Consultants, Inc.
(attached).

End Exhibit 3



AGREEMENT CONSULTANT-CLIENT

THIS AGREEMENT made and entered into by and between BG CONSULTANTS, INC., party of the first part, (hereinafter called the CONSULTANT), and City of Emporia, KS, party of the second part, (hereinafter called the CLIENT).

WITNESSETH:

WHEREAS, the CLIENT is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining Services for the following improvement:

2020 Neosho River Low Water Dam Improvements
Preliminary Engineering and Construction Engineering Services
Emporia, KS 66801

WHEREAS, the CONSULTANT is licensed in accordance with the laws of the State of Kansas and is qualified to perform the Professional Services desired by the CLIENT now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

SECTION 1 – DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this contract, and other forms of any defined words shall have a meaning parallel thereto.

- 1.1 “Additional Services” means any Services requested by the CLIENT which are not covered by Exhibit 1 of this Agreement.
- 1.2 “Agreement” means this contract and includes change orders issued in writing.
- 1.3 “CLIENT” or “CLIENT” means the agency, business or person identified on page 1 as “CLIENT” and is responsible for ordering and payment for work on this project.
- 1.4 “CONSULTANT” or “CONSULTANT” means the company identified on page 1. CONSULTANT shall employ for the Services rendered, engineers, architects and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.
- 1.5 “Contract Documents” means those documents so identified in the Agreement for this Project, including Engineering, Architectural and/or Survey documents under this Agreement. Terms defined in General Conditions shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.
- 1.6 “Engineering Documents” or “Architectural Documents” or “Survey Documents” means plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums or correspondence related to the work described in Exhibit 1 attached hereto.

- 1.7 “Consulting Services” or “Engineering Services” or “Architectural Services” or “Survey Services” means the professional services, labor, materials, supplies, testing and other acts or duties required of the CONSULTANT under this Agreement, together with Additional Services as CLIENT may request and evidenced by a supplemental agreement pursuant to the terms of this Agreement.
- 1.8 “Services” is a description of the required work as shown in **Exhibit 1**.
- 1.9 “Subsurface Borings and Testing” means borings, probings and subsurface explorations, laboratory tests and inspection of samples, materials and equipment; and appropriate professional interpretations of all the foregoing.

SECTION 2 – RESPONSIBILITIES OF CONSULTANT

- 2.1 **SCOPE OF SERVICES:** The CONSULTANT shall furnish and perform the various Professional Services of the Project to which this Agreement applies, as specifically provided in **Exhibit 1** for the completion of the Project.

2.2 GENERAL DUTIES AND RESPONSIBILITIES

- 2.2.1 **Personnel:** The CONSULTANT shall assign qualified personnel to perform professional Services concerning the Project. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal point of contact on this Project.

Name:	Bruce Boettcher
Address:	2508 W. 15 th Ave.
	Emporia, KS 66801
Phone:	620.343.7842

- 2.2.2 **Standard of Care:** In the performance of professional Services, CONSULTANT will use that level of care and skill ordinarily exercised by reputable members of CONSULTANT'S profession currently practicing in the same locality under similar conditions. No other representation, guarantee or warranty, express or implied, is included or intended in this agreement or in any communication (oral or written) report, opinion, document or instrument of service.
- 2.2.3 **Independent Contractor:** The CONSULTANT is an independent contractor and as such is not an employee of the CLIENT.
- 2.2.4 **Insurance:** CONSULTANT will maintain insurance for this Agreement in the following types: (i) worker's compensation insurance as required by applicable law, (ii) comprehensive general liability insurance (CGL), (iii) automobile liability insurance and (iv) Professional liability insurance.
- 2.2.5 **Subsurface Borings and Material Testing:** If tests additional to those provided in Exhibit 1 are necessary for design, the CONSULTANT shall prepare a request for the necessary additional borings and procure at least two proposals, including cost, from Geotechnical firms who engage in providing Subsurface Borings and Testing Services. The CONSULTANT will provide this information to the CLIENT and the CLIENT will contract directly with the Geotechnical firm. The CONSULTANT will not charge an add-on percentage for the Geotechnical firm's work. The CLIENT will pay the Geotechnical firm separately from this Agreement.

- 2.2.6. **Service by and Payment to Others:** Any work authorized in writing by the CLIENT and performed by a third party, other than the CONSULTANT or their SUBCONSULTANTS in connection with the proposed Project, shall be contracted for and paid for by the CLIENT directly to the third party or parties. Fees for extra work shall be subject to negotiation between the CLIENT and the third party. Fees shall be approved by the CLIENT prior to the execution of any extra work. Although the CONSULTANT may assist the CLIENT in procuring such Services of third parties. Where any design services are provided by persons or entities not under CONSULTANT'S direct control, CONSULTANT'S role shall be limited to its evaluation of the general conformance with the design intent and the interface with CONSULTANT'S design and portion of the project. Except to the extent it is actually aware of a deficiency, error, or omission in such design by others, CONSULTANT shall have no responsibility for such design and may rely upon its adequacy, accuracy, and completeness in all respects.
- 2.2.7. **Subcontracting of Service:** The CONSULTANT shall not subcontract or assign any of the architectural, engineering, surveying or consulting Services to be performed under this Agreement without first obtaining the approval of the CLIENT regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Neither the CLIENT nor the CONSULTANT shall assign any rights or duties under this Agreement without the prior consent of the other party.
- 2.2.8. **Endorsement:** The CONSULTANT shall sign and seal final plans, specifications, estimates and data furnished by the CONSULTANT according to Kansas Statutes and Rules and Regulations.
- 2.2.9. **Force Majeure:** Should performance of Services by CONSULTANT be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes, but is not restricted to, acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by CONSULTANT; fires; floods; labor disturbances; epidemics; and unusually severe weather. CONSULTANT will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Work Order, where appropriate, based upon the effect of the Force Majeure on performance by CONSULTANT.
- 2.2.10. **Inspection of Documents:** The CONSULTANT shall maintain Project records for inspection by the CLIENT during the contract period and for three (3) years from the date of final payment.
- 2.2.11. **No Fiduciary Duty:** The CONSULTANT shall perform its services consistent with the professional skill and care ordinarily provided by CONSULTANTS practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The CONSULTANT shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. CONSULTANT makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with CONSULTANT'S services. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified. The CONSULTANT shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship.

SECTION 3 – CLIENT RESPONSIBILITIES

3.1 GENERAL DUTIES AND RESPONSIBILITIES

- 3.1.1. **Communication:** The CLIENT shall provide to the CONSULTANT information and criteria regarding the CLIENT'S requirement for the Project; examine and respond in a timely manner to the CONSULTANT'S submissions and give notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in the Services. The CLIENT represents that all information they provide is accurate. Our review and use of the information will be to the standard of care and any delays or additional costs due to inaccurate information will be the responsibility of the CLIENT.
- 3.1.2. **Access:** The CLIENT will provide access agreements for the CONSULTANT to enter public and private property when necessary.
- 3.1.3. **Duties:** The CLIENT shall furnish and perform the various duties and Services in all phases of the Project which are outlined and designated in Exhibit 1 as the CLIENT'S responsibility.
- 3.1.4. **Program and Budget:** The CLIENT shall provide full information stating the CLIENT'S objectives, schedule, budget with reasonable contingencies and necessary design criteria so that CONSULTANT is able to fully understand the project requirements.
- 3.1.5. **Testing:** Any additional tests required to supplement the Scope of Services or tests required by law shall be furnished by the CLIENT.
- 3.1.6. **Legal, Insurance, Audit:** The CLIENT shall furnish all legal, accounting and insurance counseling Services as may be necessary at any time for the Project. The CLIENT shall furnish all bond forms required for the Project.
- 3.1.7. **Project Representative:** The CLIENT will assign the person indicated below to represent the CLIENT in coordinating this Project with the CONSULTANT, with authority to transmit instructions and define policies and decisions of the CLIENT.

Name: Dean Grant
Address: 1220 Hatcher St.
Emporia, KS 66801
Phone: 620.340.6335

- 3.1.8. **Billing Contact:** In this section, the CLIENT will identify the billing contact and address. The CONSULTANT will submit invoices according to this contract to the CLIENT'S billing contact at the address shown:

Name: Dean Grant
Address: 1220 Hatcher St.
Emporia, KS 66801
Phone: 620.340.6335

SECTION 4 – PAYMENT

4.1 COMPENSATION

- 4.1.1. **Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a Lump Sum Fee according to **Exhibit 2** of this Agreement for Preliminary Engineering Services. The Lump Sum Fee for Preliminary Engineering is a total of \$117,900.00 Dollars plus reimbursable expenses as outlined in **Exhibit 2** and for the Scope of Services as shown in

Exhibit 1 of this Agreement. Payment of the Lump Sum Fee and reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.

- 4.1.2. **Construction Engineering Fee and Expense:** The CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on Construction Engineering at the rates indicated in the attached Fee Schedule; **Exhibit 2** and the actual reimbursable expenses permitted under this Agreement and incurred on the Project, but not to exceed a maximum fee of \$85,000.00 Dollars. This fee is based on the scope of Services outlined in **Exhibit 1** of this Agreement. Payment of the Professional Fees and reimbursables shall be made by the CLIENT according to the schedule and upon completion of work as shown in **Exhibit 2**. Other methods of compensation are allowed only after written approval by both parties to this Agreement. Payment is due within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.3. **Hourly Rate:** Any Additional Services which are not set forth in this Agreement will be charged on the basis of BG Consultants, Inc. standard hourly rate schedule in effect at the time of services, unless stated otherwise in a properly executed addendum to this contract for Additional Services. No Additional Services or costs shall be incurred without proper written authorization of the CLIENT.
- 4.1.4. **Annual Rate Adjustment:** The payment amounts listed in this Agreement are based on the work being performed within one year of the contract date. Because of natural time delays that may be encountered in the administration and work to be performed for the project, each value will be increased at the rate of 3%, compounded annually, beginning after one year from the date of the contract and ending when that item is approved for billing.
- 4.1.5. **Reimbursable Expenses:** An estimate of reimbursable expenses plus ten (10) percent shall be included in the total estimate of cost for this project and as shown in **Exhibit 2**. Total estimated cost is calculated as Lump Sum plus reimbursable expenses plus ten (10) percent. Reimbursable expenses include, but are not limited to, expenses of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; expenses of printing and reproductions; postage; expenses of renderings and models requested by the CLIENT and other costs as authorized by the CLIENT. Reimbursable expenses will not include overhead costs or additional insurance premiums.
- 4.1.6. **Sales Tax:** Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on any amount of compensation, fees or Services. Should such taxes be imposed, the CLIENT shall reimburse the CONSULTANT in addition to the contractual amounts provided. The CLIENT shall provide tax exempt number, if required, and if requested by the CONSULTANT.
- 4.1.7. **Billing:** CONSULTANT shall bill the CLIENT monthly for services and reimbursable expenses according to **Exhibit 2**. The bill submitted by CONSULTANT shall state the services and reimbursable expenses for which payment is requested, notwithstanding any claim for interest or penalty claimed in a CONSULTANT'S invoice. The CLIENT agrees to pay within thirty (30) days of billing by the CONSULTANT and any late payment will incur an interest charge of one and one-half (1½) percent per month.
- 4.1.8. **Timing of Services:** CONSULTANT will perform the Services according to Exhibit 2. However, if during their performance, for reasons beyond the control of the CONSULTANT,

delays occur, the parties agree that they will negotiate in writing an equitable adjustment of time and compensation, taking in to consideration the impact of such delays. CONSULTANT will endeavor to start its services on the anticipated start date and continue to endeavor to complete its services according to the schedule indicated in Exhibit 2. The start date, completion date and any milestone for project delivery are approximate only and CONSULTANT reserves the right to adjust its schedule and all of those dates at its sole discretion for delays caused by the CLIENT, Owner or third parties.

- 4.1.9. **Change in Scope:** For modifications in authorized scope of services or project scope and/or modifications of drawings and/or specifications previously accepted by the CLIENT, when requested by the CLIENT and through no fault of the CONSULTANT, the CONSULTANT shall be compensated for time and expense required to incorporate such modifications at CONSULTANT'S standard hourly rates. Provided, however, that any increase in contract price or contract time must be requested by the CONSULTANT and must be approved through a written supplemental agreement prior to performing such services. CONSULTANT shall correct or revise errors or deficiencies in its designs, drawings or specifications without additional compensation when due to CONSULTANT'S negligence, error or omission.
- 4.1.10. **Additional Services:** The CONSULTANT shall provide, with the CLIENT'S concurrence, Services in addition to those listed in Exhibit 1 when such Services are requested in writing by the CLIENT. Prior to providing Additional Services, the CONSULTANT will submit a proposal outlining the Additional Services to be provided, and an hourly or lump sum fee adjustment. Payment to the CONSULTANT, as compensation for these Additional Services, shall be in accordance with the mutually agreed adjustment to the CONSULTANT'S fee. Reimbursable expenses incurred in conjunction with Additional Services shall be paid separately and those reimbursable expenses shall be paid at cost plus ten (10) percent. Records of reimbursable expenses and expenses pertaining to Additional Services and Services performed on an hourly basis shall be made available to the CLIENT if so requested in writing.
- 4.1.11. **Supplemental Agreement:** This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by written amendment signed by both parties. The contract price and contract time may only be changed by a written supplemental agreement approved by the CLIENT, unless it is the result of an emergency situation, in which case the CLIENT may give verbal, e-mail or facsimile approval which shall be the same as written and approved supplemental agreement.

SECTION 5 – MUTUAL PROVISIONS

5.1 TERMINATION

- 5.1.1. **Notice:** The CLIENT reserves the right to terminate this Agreement for either cause or for its convenience and without cause or default on the part of the CONSULTANT, by providing written notice of such termination to the CONSULTANT. Such notice will be with Twenty Four (24) hours' notice.

The CONSULTANT reserves the right to terminate this Agreement based on failure of CLIENT to make payments or any material breach by the CLIENT.

If the CLIENT fails to make payments to the CONSULTANT in accordance with this Agreement or fails to meet its other material responsibilities under this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the CONSULTANT'S option, cause for suspension of performance of services under this

Agreement. If the CONSULTANT elects to suspend services, the CONSULTANT shall give seven (7) days' written notice to the CLIENT before suspending services. In the event of a suspension of services, the CONSULTANT shall have no liability to the CLIENT for delay or damage caused the CLIENT because of such suspension of services. Before resuming services, the CONSULTANT shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTANT'S services. The CONSULTANT'S fees for the remaining services and the time schedules shall be equitably adjusted.

- 5.1.2. **Compensation for Convenience Termination:** If CLIENT shall terminate for its convenience, as herein provided, CLIENT shall compensate CONSULTANT for all Services completed to date prior to receipt of the termination notice.
- 5.1.3. **Compensation for Default Termination:** If the CLIENT shall terminate for cause or default on the part of the CONSULTANT, the CLIENT shall compensate the CONSULTANT for the reasonable cost of Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.
- 5.1.4. **Incomplete Documents:** Neither the CONSULTANT, nor its SUBCONSULTANT, shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this section, the CONSULTANT having been deprived of the opportunity to complete such documents and certify them as ready for construction and/or complete.

5.2 DISPUTE RESOLUTION

- 5.2.1. If a claim, dispute or controversy arises out of or relates to the interpretation, application, enforcement or performance of Services under this Agreement, CONSULTANT and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of CONSULTANT and CLIENT. If such negotiations are unsuccessful, CONSULTANT and CLIENT agree to attempt to settle the dispute by good faith mediation. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in Kansas. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

5.3 OWNERSHIP OF INSTRUMENTS OF SERVICE

- 5.3.1. All documents prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT'S professional service, and CONSULTANT shall retain ownership and property interest therein, including all copyrights. Upon payment for services rendered, CONSULTANT grants CLIENT a license to use instruments of CONSULTANT'S professional service for the purpose of constructing, occupying, or maintaining the project. Reuse or modification of any such documents by CLIENT, without CONSULTANT'S written permission, shall be at CLIENT'S sole risk, and CLIENT agrees to indemnify, defend, and hold CONSULTANT harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by CLIENT or by others acting through CLIENT.

5.4 INDEMNIFY AND HOLD HARMLESS

- 5.4.1. CLIENT shall indemnify and hold CONSULTANT, its officers and employees harmless from and against any claim, judgment, demand, or cause of action to the extent caused by: (i) CLIENT'S breach of this Agreement; (ii) the negligent acts or omissions of CLIENT or its employees, contractors or agents; (iii) site access or damages to any surface or subterranean structures or any damage necessary for site access.

5.4.2. In addition, where the Services include preparation of plans and specifications and/or construction observation activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and hold harmless CONSULTANT from and against loss, damage, or injury attributable to personal injury or property damage to the extent caused by such contractors' performance or nonperformance of their work. The CLIENT will cause the contractor to name BG CONSULTANTS, Inc. (CONSULTANT) as additional insured on the contractor's General Liability Policy.

5.4.3. CONSULTANT shall indemnify and hold CLIENT and its employees and officials from loss to the extent caused or incurred by the negligence, errors or omissions of the CONSULTANT, its officers or employees in performance of Services pursuant to this Agreement.

5.5 ENTIRE AGREEMENT

5.5.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

5.6 APPLICABLE LAW

5.6.1. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with laws of the State of Kansas.

5.7 ASSIGNMENT OF AGREEMENT

5.7.1. This Agreement shall not be assigned or transferred by either the CONSULTANT or the CLIENT without the written consent of the other.

5.8 NO THIRD PARTY BENEFICIARIES

5.8.1. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

5.9 LIMITATION OF LIABILITY

5.9.1. CLIENT'S exclusive remedy for any alleged breach of standard of care hereunder shall be to require CONSULTANT to re-perform any defective Services. Notwithstanding any other provision of this Agreement, the total liability of CONSULTANT, its officers, directors and employees for liabilities, claims, judgments, demands and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for the Services. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after completion of the Services.

5.9.2. CLIENT agrees that any claim for damages filed against CONSULTANT by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against CONSULTANT or its successors or assigns and that no individual person shall be made personally liable for damages in whole or in part.

5.9.3. CONSULTANT and CLIENT shall not be responsible to each other for any special, incidental, indirect or consequential damages (including lost profits) incurred by either CONSULTANT or CLIENT or for which either party may be liable to any third party, which

damages have been or are occasioned by Services performed or reports prepared or other work performed hereunder.

5.10 COMPLIANCE WITH LAWS

5.10.1 CONSULTANT shall abide by known applicable federal, state and local laws, ordinances and regulations applicable to this Project until the Consulting Services required by this Agreement are completed consistent with the Professional Standard of Care. CONSULTANT shall secure occupational and professional licenses, permits, etc., from public and private sources necessary for the fulfillment of its obligations under this Agreement.

5.11 TITLES, SUBHEADS AND CAPITALIZATION

5.11.1 Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement. Some terms are capitalized throughout the Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

5.12 SEVERABILITY CLAUSE

5.12.1. Should any provision of this Agreement be determined to be void, invalid or unenforceable or illegal for whatever reason, such provisions shall be null and void; provided, however that the remaining provisions of this Agreement shall be unaffected hereby and shall continue to be valid and enforceable.

5.13 FIELD REPRESENTATION

5.13.1. Unless otherwise expressly agreed to in writing, CONSULTANT shall not be responsible for the safety or direction of the means and methods at the contractor's project site or their employees or agents, and the presence of CONSULTANT at the project site will not relieve the contractor of its responsibilities for performing the work in accordance with applicable regulations, or in accordance with project plans and specifications. If necessary, CLIENT will advise any contractors that CONSULTANT'S Services are so limited. CONSULTANT will not assume the role of "prime contractor", "constructor", "controlling employer", "supervisor" or their equivalents, unless the scope of such Services are expressly agreed to in writing.

5.14 HAZARDOUS MATERIALS

5.14.1. The CONSULTANT and the CONSULTANT'S SUBCONSULTANTS shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials in any form at the Project site.

5.15 AFFIRMATIVE ACTION

5.15.1. The CONSULTANT agrees to comply with the provisions of K.S.A. 44-1030 in the Kansas Acts Against Discrimination.

5.16 SPECIAL PROVISIONS

5.16.1. Special Provisions may be attached and become a part of this agreement as **Exhibit 3**.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate this _____ day

of _____, 20__20__.

CONSULTANT:

BG Consultants, Inc.

By: _____

Printed Name: Bruce Boettcher

Title: Vice President

CLIENT:

City of Emporia, KS

By: _____

Printed Name: _____

Title: _____

END OF CONSULTANT-CLIENT AGREEMENT

EXHIBIT 1
SCOPE OF SERVICES

Project: Neosho River Low Water Dam Improvements
Owner: City of Emporia, Kansas
Engineer: BG Consultants, Inc.

The Professional Services to be performed under this section are as follows:

A. PRELIMINARY ENGINEERING:

1. Consult with CLIENT and Staff to coordinate each major section of the project development and design. These meetings may be formal council meetings and/or informal staff meetings, as deemed necessary by the CLIENT related to the lift station rehabilitation and improvements.
2. Complete informational gathering by the field and office research for the project.
3. Assist CLIENT with the solicitation and selection of a geotechnical firm to investigate underground field conditions. The CLIENT will contract directly with the geotechnical firm. Geotechnical services are not included in this contract.
4. Consult with the CLIENT and regulatory agencies concerning the construction documents and requirements covering specific items of design.
5. Design Neosho River Low Water Dam improvements as outlined in technical memo dated 8/26/20 and EOPC dated 8/27/20 (BG project # 19-1334E - attached).
6. Prepare preliminary and final estimates of probable construction cost for the CLIENT.
7. Prepare preliminary plans to be reviewed by the CLIENT and the Kansas Department of Health and Environment (KDHE).
8. After review of the preliminary plans by the CLIENT and KDHE, prepare final plans and specifications for the proposed construction work.

9. Construction plans, details and project specifications shall be prepared by using BG Consultants, Inc. standards.

B. CONSTRUCTION ENGINEERING:

1. Bid Letting Services: Provide assistance of bid letting and contract preparation to assist the CLIENT in the open bidding process and selection of a contractor.
 - a. Answer questions from contractors regarding the final plans. If necessary, issue requested addenda.
 - b. If requested by the CLIENT, attend and chair a pre-bid meeting to explain conditions or designs and to answer questions regarding the plans.
 - c. Attend the bid letting, tabulate bids and provide a recommendation for award.
2. Construction Engineering & Resident Project Representative: Provide Resident Project Representative (RPR) services as outlined and defined in Exhibit A (attached).
 - a. Review the contractor's submittals and submit written opinion of plan and specification compliance.
 - b. Perform construction engineering and RPR services for the work being performed by contractor.
 - c. Compile logs for site visits and project monitoring.
 - d. Coordinate construction observation activities with the CLIENT.
 - e. Prepare project performance certifications as required.
 - f. Prepare "Record Drawings" from construction installation "As Built" information provided by the contractor.

C. SUPPLEMENTAL/ADDITIONAL SERVICES

1. Items listed in this section, as requested by the CLIENT, will require additional work by the CONSULTANT outside of the agreements scope of services.
2. Establishment of Right-of-Way or Easements required for the project.

3. Provide Right-of-Way, Permanent Easements and/or Temporary Easements descriptions, if needed.
4. Administration for obtaining appraisals or filing easements and the cost thereof.
5. Changes in the general scope, extent, or character of the project or its design, including but not limited to changes in size, complexity, schedule, character of construction or method of financing; and revising previously accepted studies, reports, or design documents when such revisions are required by changes in laws, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies/reports/documents or designs or due to any other causes beyond the CONSULTANT'S control.

End Exhibit 1

EXHIBIT 2

COST AND SCHEDULE

Professional services set forth in Exhibit 1 **Preliminary Engineering** items 1 through 9 the LUMP SUM FEE of **\$117,900.00**. Billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. Reimbursable expenses will not be billed unless requested and authorized by the CLIENT.

Services will be performed in an effort to meet City funding requirements including the following milestones:

The fee included within this contract is based upon the preliminary engineering being accomplished within **four calendar months** from the Notice To Proceed with work.

Construction Engineering services set forth in Section B items 1 through 2, the HOURLY FEE of **\$85,000.00**. Billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. Reimbursable expenses will not be billed unless requested and authorized by the CLIENT.

The fee included within this contract is based upon construction being accomplished within **60 working** days. Construction duration beyond this duration may result in additional fees. Additional fees associated with construction duration would require CLIENT approval, as appropriate, and would be identified in a supplement to this agreement.

Additional Services set forth in Exhibit 1, Section C will be billed hourly, as requested by the CLIENT, at standard hourly rates. All billings will be made on a monthly basis for the prior month's work. Payment for each billing shall be due and payable within 30 days of billing by the CONSULTANT. The out-of-pocket expenses, material and mileage directly related to the CONSULTANT'S performance of this agreement shall be included in the Not To Exceed fee.

Total Estimated Fees = \$202,900.00

End Exhibit 2

EXHIBIT 3

SPECIAL PROVISIONS

1. Construction Engineering & Resident Project Representative Services:
Exhibit A (attached)
2. Attached is 2020 Standard Hourly Rates for BG Consultants, Inc.
(attached).

End Exhibit 3

AGENDA ITEM SUMMARY

MEETING DATE: September 16, 2020

ITEM NUMBER: 9

SUBJECT: Consider the approval of a Resolution authorizing the offering of the City of Emporia 2020 refunding and improvement general obligation bonds in the estimated amount of \$6,880,000.00.

RECOMMENDATION: Approve the Resolution authorizing the offering of the City of Emporia 2020 refunding and improvement general obligation bonds in the estimated amount of \$6,880,000.00.

BACKGROUND SUMMARY:

The City Commission has previously authorized various projects for the 2020 General Obligation bond issue. This project also provides for the redemption of the 2012-A general obligation bonds at an estimated savings of \$133,000.00.

Following is the proposed calendar for this bond issue

September 16, 2020	Approve Resolution offering the City's 2020 refunding and general improvement bonds. Authorize the Mayor to sign a Bond Purchase Agreement on the day the bonds are offered and sold.
October 7, 2020	Authorize the bond ordinance and resolution authorizing the sale of the bonds and the form of notice of redemption addressed to the State Treasurer for the Series 2012-A bonds being called for redemption on November 1, 2020

City staff will review the proposed projects for the 2020 general obligation bond issue at the upcoming Study Session. All of the projects have been authorized and City staff is proposing to refund the Series 2012-A general obligation for a projected present value savings of approximately \$133,000.00.

A copy of the proposed projects is attached for your review.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

2020 Bond Issuance

Project Number	Project Description	Ordinance Number	Authorization amount	Project amount	Years to Bond	Revenue Source
AM1901 19Radio	2019 Ambulance	18-35	270,000.00	267,000.00	3	B&I
	Radio Communication upgrade	19-26	900,000.00	850,000.00	3	B&I
	Dump Truck for Street Department	20-25	125,000.00	100,000.00	3	B&I
	Water Main Trfs Station to Prairie	19-19	600,000.00	542,000.00	15	Water
WM1903	Additional for water tower		5,000,000.00	250,000.00	15	Water
	Paving Funston Street 6th to 5th	20-19	341,000.00	341,000.00	15	B&I
	Paving 5th Ave Funston to Sunnyslope	20-19	117,000.00	117,000.00	15	B&I
	Paving 30th Avenue	20-19	753,000.00	753,000.00	15	B&I
	Paving Soden's Grove to South Exchange	20-19	95,000.00	95,000.00	15	B&I
	Public works building	20-20	725,000.00	725,000.00	15	B&I
	Airport buildings	20-20	375,000.00	375,000.00	15	B&I
	Class A Pumper	20-25	610,000.00	610,000.00	15	B&I
	Peter Pan Parking Lot	20-11	100,000.00	100,000.00	15	B&I
				5,125,000.00		
						bonded \$3,195,000
						100% Performance bond

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF EMPORIA, KANSAS AUTHORIZING AND PROVIDING FOR THE UNDERWRITING AND OFFERING FOR SALE OF THE CITY'S GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2020 IN THE ESTIMATED AGGREGATE PRINCIPAL AMOUNT OF \$6,880,000.

WHEREAS, the City of Emporia, Kansas (the "City") has selected the firm of Raymond James & Associates, Inc., Kansas City, Missouri (the "Underwriter") to underwrite an estimated \$6,880,000 aggregate principal amount of the City's General Obligation Refunding and Improvement Bonds, Series 2020 (the "Bonds") to (i) provide for the current refunding of the City's outstanding General Obligation Bonds, Series 2012-A (the "Refunded Bonds") and (ii) to pay costs of water system improvements, street and parking lot improvements, public works building improvements, building and facilities improvements at the municipal airport, and the acquisition of public safety equipment (collectively, the "Project"), and (iii) to pay the costs of issuing such bonds; and

WHEREAS, the City desires to authorize the Underwriter to offer the Bonds for sale and take such other actions as are necessary to offer the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS:

SECTION 1. Authorization of Bond Offering. The Underwriter is authorized to proceed with offering for sale of the General Obligation Refunding and Improvement Bonds, Series 2020 in the estimated principal amount of \$6,880,000 (the "Bonds"), to refund and defease the Refunded Bonds (as defined above), pay the costs of the Project (as defined above) and to pay costs of issuing the Bonds.

SECTION 2. Authorization Preliminary Official Statement and Official Statement. The Underwriter is authorized and directed to prepare or provide for the preparation of a Preliminary Official Statement for the Bonds. The Mayor is authorized to execute the Preliminary Official Statement on behalf of the City. The City consents to and authorizes the Underwriter to use and publicly distribute the Preliminary Official Statement (but only in its entirety) to prospective purchasers of the Bonds. Upon a successful offering of the Bonds, the Underwriter is authorized to prepare or provide for the preparation of a final Official Statement by amending, supplementing and completing the Preliminary Official Statement and the City authorizes the execution of the final Official Statement by its Mayor or acting Mayor, with such changes and additions as such officer deems appropriate. The final Official Statement is authorized to be distributed to the public (in its entirety) in connection with the offering and sale of the Bonds.

SECTION 3. SEC Rule Compliance; Continuing Disclosure. To permit the Underwriter to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission (the "SEC Rule") the Mayor or the City Clerk are authorized, if requested to do so, to certify that the City deems the information in the Preliminary Official Statement "final" as of

its date except for the omission of information as permitted by the SEC Rule and to take such other actions as such officers find necessary to permit the Underwriter to comply with the SEC Rule. The City agrees that, on or before the date the Bonds are delivered, it will enter into a written undertaking to provide continuing disclosure about the City while the Bonds remain outstanding, if required by the applicable sections of the SEC Rule.

SECTION 4. MSRB Rule Compliance. The City acknowledges receipt of written disclosures from the Underwriter stating that the Underwriter is engaged with respect to the Bonds as an underwriter and not as a financial advisor or municipal advisor and, as such, the Underwriter is not acting as an advisor to the City and does not owe a fiduciary duty to the City pursuant to Section 15B of the Securities and Exchange Act or under any applicable state law.

SECTION 5. Bond Purchase Agreement. The Mayor is authorized to execute a Bond Purchase Agreement between the City and the Underwriter as of the date the Bonds are offered and priced, subject to the following parameters: (a) the principal amount of the Bonds shall not exceed \$7,750,000; (b) the true interest cost of the Bonds shall not exceed 2.50%; (c) the final maturity of the Bonds does not exceed 15 years and (d) the present value savings associated with refunding the Refunded Bonds shall be not less than 2.50% of the outstanding principal of the Refunded Bonds.

SECTION 6. Authorization of Additional Actions as Required. The Mayor, the City Clerk, the Underwriter and Triplett Woolf Garretson, LLC, as the City's Bond Counsel, are each authorized and directed to take all such other actions as are necessary to complete the offering and issuance of the Bonds, including but not limited to, providing any necessary notice of the City's intent to redeem the Refunded Bonds on their projected redemption date of November 1, 2020.

SECTION 7. Effective Date. This Resolution shall be in force and take effect from and after its adoption and approval by the governing body.

[Remainder of Page Intentionally Left Blank]

ADOPTED AND APPROVED by the governing body of the City of Emporia, Kansas on
September 16, 2020.

CITY OF EMPORIA, KANSAS

[Seal]

By _____
Robert F. Gilligan, Vice-Mayor

ATTEST:

By _____
Kerry Sull, City Clerk

EXCERPT OF MINUTES

The governing body of the City of Emporia, Kansas, met in regular session at the usual meeting place in the City on September 16, 2020, at 7:00 p.m., with Mayor Danny Giefer presiding, and the following members of the governing body present:

The following members were absent:

A Resolution was presented entitled:

A RESOLUTION OF THE CITY OF EMPORIA, KANSAS AUTHORIZING AND PROVIDING FOR THE UNDERWRITING AND OFFERING FOR SALE OF THE CITY'S GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2020 IN THE ESTIMATED AGGREGATE PRINCIPAL AMOUNT OF \$6,880,000.

The Resolution was considered and discussed; and on motion of _____, seconded by _____, the Resolution was adopted by a majority vote of the members present. The Resolution was assigned No. ____.

CITY CLERK'S
CERTIFICATION OF EXCERPT OF MINUTES

I certify that the foregoing is a true and correct Excerpt of Minutes of the September 16, 2020 meeting of the governing body of the City of Emporia, Kansas.

[seal]

Kerry Sull, City Clerk

September 16, 2020

Mr. Jake LaTurner, State Treasurer
900 Jackson, Suite 201
Topeka, Kansas 66612-1235

RE: Notice of Redemption, City of Emporia, Kansas, General Obligation Bonds, Series 2012-A, Dated January 4, 2012

Dear Mr. LaTurner:

Subject to the provisions of the last paragraph of this Notice, notice is given that, pursuant to the provisions of Section 3(A) of Resolution No. 3498 of the City of Emporia, Kansas, all of the above described General Obligation Bonds, Series 2012-A maturing on or after September 1, 2021 (the "Bonds"), will be redeemed prior to their stated maturity on November 1, 2020 (the "Redemption Date"). The Bonds so called for redemption are as follows:

SERIAL BONDS

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
09/01/2021	520,000	3.00%
09/01/2022	540,000	3.00%
09/01/2023	555,000	3.00%

TERM BONDS

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
09/01/2026	\$305,000	3.00%
09/01/2029	330,000	3.50%

Subject to the provisions of the last paragraph of this Notice, the Bonds shall become due and payable on the Redemption Date, at a redemption price of 100% of the principal amount thereof, plus accrued interest thereon to the Redemption Date, without premium. The Bonds should be presented for redemption and payment at the principal office of the Treasurer of the State of Kansas (the "Paying Agent").

On and after the Redemption Date, all interest on the Bonds so called for redemption will cease to accrue.

This Notice of Redemption, and the payment of the principal of and interest on the Bonds on the specified Redemption Date, are subject to the issuance and delivery by the City of its General Obligation Refunding and Improvement Bonds, Series 2020 (the "Refunding Bonds") on or before the Redemption Date in an amount which, when combined with other available funds, shall be sufficient to provide funds to pay the specified redemption price of the Bonds. In the event the Refunding Bonds have not been issued by the Redemption Date, this notice shall be null, void and of no force and effect, the Bonds delivered for redemption shall be returned to the respective owners thereof, and said Bonds shall remain outstanding as though this Notice of Redemption had not been given.

You are further requested to prepare and send notice of the redemption of the Bonds to the Municipal Securities Rulemaking Board at www.emma.msrb.org.

Dated: September 16, 2020.

CITY OF EMPORIA, KANSAS

By _____
Kerry Sull, City Clerk

2020 Bond Issuance

Project Number	Project Description	Ordinance Number	Authorization amount	Project amount	Years to Bond	Revenue Source
AM1901 19Radio	2019 Ambulance	18-35	270,000.00	267,000.00	3	B&I
	Radio Communication upgrade	19-22	900,000.00	850,000.00	3	B&I
	Dump Truck for Street Department	20-25	125,000.00	100,000.00	3	B&I
WM1903	Water Main Trfs Station to Prairie	19-19	600,000.00	542,000.00	10	Water
	Additional for water tower		5,000,000.00	250,000.00	10	Water
	Paving Funston Street 6th to 5th	20-19	341,000.00	341,000.00	10	B&I
	Paving 5th Ave Funston to Sunnyslope	20-19	117,000.00	117,000.00	10	B&I
	Paving 30th Avenue	20-19	753,000.00	753,000.00	10	B&I
	Paving Soden's Grove to South Exchange	20-19	95,000.00	95,000.00	10	B&I
	Public works building	20-20	725,000.00	725,000.00	10	B&I
	Airport buildings	20-20	375,000.00	375,000.00	10	B&I
	Class A Pumper	20-25	610,000.00	610,000.00	10	B&I
	Peter Pan Parking Lot	20-11	100,000.00	100,000.00	10	B&I
				5,125,000.00		

AGENDA ITEM SUMMARY

MEETING DATE: September 16, 2020

ITEM NUMBER: 10

SUBJECT: Consider Ordinance Amending City Code Sections 28-22, 28-142, and 28-143 pertaining to Charge of Water & Sewer Services for Multifamily Dwellings.

RECOMMENDATION: Approve Ordinance

BACKGROUND SUMMARY:

Multifamily dwellings pay a single monthly service charge based upon the size of meter installed at the building. However, the monthly service charge is not sufficient to cover the water and wastewater services which are being provided.

The attached ordinance will allow multifamily dwellings which are equipped or built after January 1, 2021 to be charged a service charge for each unit in the building. This ordinance will provide a more accurate charge for the services being utilized.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____
GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

ORDINANCE NO 20-

AN ORDINANCE OF THE CITY OF EMPORIA, KANSAS PERTAINING TO WATER & SEWER CHARGES; AMENDING SECTION 28-22, 28-142, AND 28-143 OF THE CODE OF THE CITY OF EMPORIA, KANSAS.

BE IT ORDAINED by the Governing Body of the City of Emporia, Kansas;

Section 1. That Section 28-22 of the Code of the City of Emporia, Kansas, is hereby amended to read as follows:

“Sec. 28-22. Meters:

(a) All water sold by the city shall be measured by meter. All meters shall be furnished by the city and installed without cost to the consumer. The meters shall be located adjacent to the curb cock where practicable and otherwise at such point as the superintendent of waterworks shall direct. The owner shall leave a gap in the service line of proper size to accommodate the meter and connections furnished by the city and shall leave sufficient room about the meter for the installation of a meter box, where the meter is placed outside of the buildings.

(b) Any premises equipped or built to be occupied after January 1, 2021 as a duplex, apartment house or by other multiple dwelling units, or occupied in conjunction with a commercial building or other building which receives water service from a single meter shall pay a monthly service charge for one dwelling unit based on the size of meter installed plus an additional service charge for each additional unit at a rate equivalent to the 5/8 inch meter rate in Sec. 28-41, as amended from time to time. Hotels, motels and residential halls may receive service through a single meter and shall pay a single service charge.

(c) Separate water meters may be installed at the option of the city upon the request of the owner for each apartment or other domestic service unit.

(d) No person shall injure, molest or in any way interfere with any water meter, meter box or cover or anything appertaining thereto, and no persons shall deposit dirt, stone or rubbish of any nature in any meter or meter box or service box. The occupant of any building or premises where a meter is located shall keep the meter free from all obstructions so that it is at all times conveniently accessible for reading, inspecting or repairing. Subject to constitutional limitations, the water superintendent or persons authorized by him may enter, at any reasonable hour, premises supplied with water in order to inspect or repair meters, pipes or fixtures, or to investigate the use of water.

(e) Where a meter is located inside any building or in such other place or manner that the city cannot use customary methods for its protection against freezing or other injury, the owner of the property in which such meter is placed shall be responsible for its protection and any damages sustained by such meter shall be chargeable to the property served in the same manner as prescribed for repairs to service lines.

(f) Whether a meter is located in a building, an approved meter box or housing in the parking or sidewalk or elsewhere, the consumer or owner of the property in which such meter is placed shall be responsible for its protection and preservation, and any damage sustained by such meter shall be charged to the consumer or owner of the property served and the same shall be collectible in the same manner as monthly water bills.

(g) In case any meter fails to register for any cause, the amount charged for water during such period shall be estimated by the superintendent of waterworks, such estimate to be based on the average amount registered during like preceding period.

(h) If any meter is found to vary in excess of two percent (2%) from one hundred percent (100%) accuracy, the reading of the meter shall be corrected according to the percentage of inaccuracy found, but no correction shall extend beyond the date of the last regular monthly reading. A meter with this level of inaccuracy shall also be immediately repaired or replaced with an accurate meter. The water utility shall test any meter on request; and, if any meter tested is inaccurate in excess of two percent (2%), the unit will be corrected; and, if any meter tested is found to vary less than two percent (2%), the meter shall be replaced and a fee not to exceed the actual cost to the city for shipping and testing shall be made on the next water bill. (1962 Code § 23-107; Ord. 88-10, § 2, 3-16-1988; Ord. 07-19, § 1, 8-1-2007; Ord. ____, § 3, 9-16-2020)”

Section 2. That Section 28-142 of the Code of the City of Emporia, Kansas, is hereby amended to read as follows:

“Sec. 28-142. Classification of Users:

All users of the wastewater treatment and collection system of the city are hereby classified in the following manner:

- (1) Residential: Any premises served upon which is located a structure housing one family and which has metered water consumption supplied by an approved water meter.
- (2) Multifamily: Any premises designed for occupation by more than one family.
- (3) Educational, Religious, Public and Charitable:
 - a. Public and parochial schools, colleges, and universities;
 - b. Churches;
 - c. Public buildings and lands which are declared by the director of revenue and taxation of the state to be exempt from the payment of ad valorem taxes;
 - d. Charitable institutions which are declared by the director of revenue and taxation of the state to be exempt from the payment of ad valorem taxes.
- (4) Commercial and Industrial: All users other than those above classified which have metered water consumption.
- (5) Other: All users other than those above classified who do not have metered water consumption. Such users will be charged by contract with the city in a manner both adequate to the operation, maintenance and replacement needs of the wastewater system and proportional to other users. (1962 Code § 19-303; Ord. 963, § 1, 8-1-1979; Ord. ____, § 2, 9-16-2020)”

Section 3. That Section 28-143 of the Code of the City of Emporia, Kansas, is hereby amended to read as follows:

“Sec. 28-143. Service Charge Established:

Monthly sewer service charges based on meter size and the amount of water used in or on the premises as the same is measured by a water meter or meters are hereby established subject to the exceptions provided. All meters must be approved by the city manager in accordance with standards adopted by the governing body.

Multiple-Dwelling Units. Any premises equipped or built to be occupied as a duplex, apartment house or by other multiple-dwelling units, or occupied in conjunction with a commercial building or other building and which receives sewer service from a single meter shall pay the monthly sewer service charge for on dwelling unit based on the size of meter installed plus an additional service charge for each additional dwelling unit at a rate equivalent to the 5/8 inch meter rate in Sec. 28-144, as may be amended from time to time. (1962 Code § 19-304; Ord. 963, § 1, 8-1-1979; Ord. ____, § 3, 9-16-2020)”

Section 4. That Sections 28-22, 28-142, and 28-143 of the Code of the City of Emporia, Kansas as they existed prior to the adoption of this ordinance are hereby repealed.

Section 5. This ordinance shall take effect upon its publication in the official City newspaper.

Section 6. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Emporia, KS as an amendment thereto and shall be appropriately numbered to conform to the uniform numbering system of the Code.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 16th day of September 2020.

Robert F. Gilligan, Vice-Mayor

ATTEST:

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: September 16, 2020

ITEM NUMBER: 11

SUBJECT: Consider Ordinance Amending City Code Sec. 16-266 Pertaining to Face Masks.

RECOMMENDATION: Approve Ordinance

BACKGROUND SUMMARY:

City Code Sec. 16-266 requiring individuals to wear face masks or other face coverings in certain circumstances is scheduled to expire September 16, 2020 at 11:59 p.m. The ordinance proposal extends the expiration date to October 21, 2020 at 11:59 p.m. All other mask or face covering requirements pursuant to Sec. 16-266 would remain the same.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

ORDINANCE NO. 20-_____

AN ORDINANCE OF THE CITY OF EMPORIA, KANSAS REQUIRING INDIVIDUALS TO WEAR MASKS OR OTHER FACE COVERINGS IN CERTAIN CIRCUMSTANCES AND AMENDING CITY CODE SECTION 16-266

WHEREAS, the governing body of the City of Emporia prioritizes the protection of the health, safety, welfare and economic well-being of residents and visitors of the City of Emporia; and

WHEREAS, the spread of COVID-19 in the City of Emporia has resulted in illness, quarantines, school closures, and temporary closure of business resulting in lost wages and financial hardship; and

WHEREAS, the United States Departments of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 6,343,562 cases of illness and more than 190,262 deaths as a result of the illness across the United States; and

WHEREAS, the World Health Organization declared a pandemic on March 11, 2020; and

WHEREAS, a State of Disaster emergency was proclaimed for the State of Kansas on March 12, 2020; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-10 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, as of this date, in Kansas there have been 47,410 reported positive cases of COVID-19 spread including 495 deaths; and

WHEREAS, after a steady trend of decreasing metrics, recent weeks have seen the numbers of COVID-19 cases, hospitalizations, and deaths spike in Kansas and across the nation; and

WHEREAS, this trend of increased COVID-19 spread is a danger to the health and safety of residents and visitors to the City of Emporia, and also presents a serious threat to reopening and reviving the City's economy; and

WHEREAS, wearing a mask in public is the easiest and most effective way to protect each other and keep our businesses open and our economy running; and

WHEREAS, the City of Emporia must remain flexible to account for the evolving nature and scope of the unprecedented public health emergency posed by COVID-19, while also

simultaneously safely, strategically, and incrementally reopening business and facilitating economic recovery and revitalization; and

WHEREAS, the City of Emporia approved Ordinance 20-24 on August 5th, 2020 requiring individuals to wear masks or other face coverings in certain circumstances, with an expiration date of September 16, 2020 at 11:59 p.m.; and

WHEREAS, for the aforementioned and other reasons, the governing body of the City of Emporia is acting pursuant to its constitutional home rule authority to provide for the health, safety, welfare, and economic well-being of residents and visitors of the City of Emporia by amending Section 16-266 of the Code of Ordinances of the City of Emporia, Kansas and extending the requirement that masks or other face coverings be worn as described in the ordinance until October 21, 2020.

BE IT ORDAINED by the Governing Body of the City of Emporia, Kansas;

Section 1. That Section 16-266 of the Code of Ordinances of the City of Emporia, Kansas, is hereby amended to read as follows:

“Sec. 16-266 Mask or other Face Coverings in Certain Circumstances.

(a) Mask or other face coverings; definitions. The following words or phrases when used in this article shall have the following meanings:

- (1) "Mask or other face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. Ideally, a mask or other face covering has two or more layers. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels.
- (2) "Public space" means any indoor or outdoor space or area that is open to the public; this does not include private residential property or private offices or workspaces that are not open to customers or public visitors."

(b) Mask or other face coverings; when required; exemptions.

- (1) All persons in the city shall cover their mouths and noses with masks or other face coverings when they are in the following situations:
 - (A) While inside any indoor public space and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity;
 - (B) Obtaining services from the healthcare sector in settings, including but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or

dental office, veterinary clinic, or blood bank, unless directed otherwise by an employee thereof or a health care provider;

- (C) Riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle; or,
- (D) While outdoors in public spaces and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity.

(2) All businesses, organizations and non-profit associations in the City of Emporia must require all employees, customers, visitors, members, or members of the public to wear a mask or other face covering as follows:

- (A) Employees, when working in any space visited by customers or members of the public and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity;
- (B) Employees, when working in any space where food is prepared or packaged for sale or distribution to others;
- (C) Customers, members, visitors, or members of the public, when in a facility managed by the business or organization and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity;
or
- (D) Employees, when in any room or enclosed area where other people (except for individuals who reside together) are present and are unable to maintain a 6-foot distance except for infrequent or incidental moments of closer proximity.

(3) The following individuals are exempt from wearing masks or other face coverings in the situations described in subsections (b)(1) and (b)(2):

- (A) Persons age five years or under—children age two years and under in particular should not wear a face covering because of the risk of suffocation;
- (B) Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering—this includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;
- (C) Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication;

- (D) Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines;
- (E) Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;
- (F) Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided they maintain a 6- foot distance between individuals (not including individuals who reside together or are seated together) with only infrequent or incidental moments of closer proximity;
- (G) Athletes who are engaged in an organized sports activity that allows athletes to maintain a 6-foot distance from others with only infrequent or incidental moments of closer proximity;
- (H) Persons who are engaged in an activity that a professional or recreational association, regulatory entity, medical association, or other public-health-oriented entity has determined cannot be safely conducted while wearing a mask or other face covering;
- (I) Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary; and,
- (J) Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law.

(4) It shall be an affirmative defense to any prosecution under subsection (a) or (b) that the person in violation is an individual listed under subsection (c)."

(c) Mask or other face coverings; penalties; enforcement.

- (1) Any person, business or organization violating the provisions of this Section of the Code of the City of Emporia shall be guilty of an infraction. The person or persons responsible for any business or organization that does not comply with subsection(b)(2) includes a sole proprietor, or any officer, partner, member, manager, director, or other supervisor for the business or organization, who may be held jointly and severally responsible for such violation with respect to any enforcement of the violation.
- (2) A violation of this section shall be punished by a fine of twenty five (\$25.00) dollars upon a first conviction, by a fine of fifty (\$50.00) dollars upon a second conviction, and by fine of one hundred dollars (\$100.00) dollars upon a third or subsequent conviction, plus court costs.

(d) Mask or other face coverings; effective term. The provisions of Section 16-266 through Section 16-268 of the city code shall be in effect until 11:59 p.m. on October 21, 2020."

Section 2. That the provisions of this ordinance as amended shall be included and incorporated in the code of the City of Emporia, Kansas.

Section 3. Effective Date. This ordinance shall take effect upon publication in the official city newspaper.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 16th day of September 2020.

Robert F. Gilligan, Vice-Mayor

ATTEST:

Kerry Sull, City Clerk

AGENDA ITEM SUMMARY

MEETING DATE: September 16, 2020

ITEM NUMBER: 12

SUBJECT: Report from the City Manager on City Activities

RECOMMENDATION: This is a verbal report that announces upcoming events, recognizes employees for outstanding contributions and provides the public with information that may be of general interest.

BACKGROUND SUMMARY: This is an opportunity to present information to the public that may not be reported in other news accounts or City activities or to highlight accomplishments of the organization.

Tentative Agenda for September 23rd Study Session

- Presentation from the Emporia Community Action Group.
- Recycling Contract Discussion
- Review Potential Map Amendments to Neighborhood Revitalization Project.
- Review 2020 General Obligation Bond Issue.

ACTION RECORD

Action: _____

Motion: _____ Second: _____

Abstained: _____ Vote: _____

GEITZ _____ GIEFER _____ GILLIGAN _____ SMITH _____ BRINKMAN _____

COMMISSION MEETING**1:30 P.M.****SEPTEMBER 2, 2020**

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, August 2, 2020, in the City Commission Meeting Room with Mayor Giefer presiding and Commissioners Brinkman, Geitz, Gilligan and Smith present. Also present were City Manager McAnarney, Assistant City Manager Massey and City Clerk Sull and City Attorney Montgomery.

Consent Agenda

It was moved by Commissioner Geitz, seconded by Commissioner Gilligan that the Consent Agenda listed below be ratified as a whole:

- a. Consider minutes of the Regular Meeting held on August 19, 2020.
- b. Consider ratification of Payroll Ordinance for the period ending on July 17, 2020.
- c. Consider Change Order No. 1 for Sanitary Sewer System Improvements Project No. SS1803.
- d. Consider Change Order No. 3 for Sanitary Sewer System Improvements Project No. SS1803.
- e. Consider Set Bid Time and Date for Elm Street & 9th Avenue Watermain Project No. WM1904.
- f. Consider accepting a new permanent sidewalk easement between the City of Emporia and Mr. G's Express LLC along the East Side of Prairie Street along Mr. G's Express LLC Car Wash.

The vote follows: Commissioner Geitz, aye; Commissioner Gilligan, aye; Commissioner Brinkman, aye; Commissioner Smith, aye; and Mayor Giefer, aye.

**CITY COMMISSION
(Public Comment)**

This is the time for the public to make comments. No comments were made at this time.

HOUSING
(Kansas Housing Resources Corporation)
(Moderate Income Housing Program)
(Resolution Number 3631)

Jeff Lynch, Community Development Coordinator, was recognized and addressed the Governing Body. He stated this resolution is to authorize the submittal of an application to the Kansas Housing Resources Corporation for Moderate Income Housing Program funding to develop single family homes in order to provide more affordable housing and to replace homes that have been demolished in the older neighborhoods, providing an in-fill housing development program to improve the City's housing. This resolution would allow the city to be a grant administrator; waive city building permits and inspection fees; donate 2 residential city owned lots; and provide \$50,000 bridge construction loans. He stated the application will be submitted for \$250,000.00 in assistance. He stated staff recommends approval of the resolution.

Commissioner Smith made a motion to approve Resolution Number 3631, a resolution authorizing the submittal of an application to the Kansas Housing Resources Corporation for Moderate Income Housing Program funding to develop and provide assistance for infill housing. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; Commissioner Gilligan, aye; and Mayor Giefer aye.

CITY COMMISSION
(Kansas Department of Commerce0
(CDBG-CV Economic Development/Meals Program)
(Approval of Grant Fund Allocations)

Assistant City Manager Massey, was recognized and addressed the Governing Body. He stated as discussed at a previous study session, the next step in the CDBG-CV grant process is for the Commission to approve the allocations and authorize the submittal of the information to the State of Kansas. There are grant funds for Economic Development Allocation of \$132,000.00 and \$35,000.00 for the Meal Program. He stated the option for disbursement of the grant funds, based on the number of qualified

employees, was capped at \$35,000.00 for Radius; and \$1,709.25 per employee for other applicants. The applicants and allocations are as follows:

Applicant	Employees	Grant
Time Travelers	1	\$ 1,709.25
Shrockbier Old Smokehouse	1	\$ 1,709.25
Maud's Tattoo	1	\$ 1,709.25
Ken's Sharpening	2	\$ 3,418.50
Amanda's Bakery	2.25	\$ 3,845.81
Gravel City Roasters	2.5	\$ 4,273.13
Chi Em Eats	2.75	\$ 4,700.44
Sunflower Gymnastics	3	\$ 5,127.75
Green Tree LLC	3	\$ 5,127.75
Flint Hills Music	4.25	\$ 7,264.31
The Sweet Granada	6.75	\$ 11,537.44
Flint Hills Mall	7	\$ 11,964.75
Flint Hills Lanes	7.25	\$ 12,392.06
Do-B's Inc.	13	\$ 22,220.25
Radius Brewing Company	26	\$ 35,000.00
TOTAL		\$131,999.94

Meal Program

Salvation Army Food Pantry	\$ 5,000.00
John & Frances Ice Food Pantry	\$ 5,000.00
First United Methodist Church Food Pantry	\$ 5,000.00
First Christian Church Food Pantry	\$ 5,000.00
Spartan Shop	\$ 5,000.00
Food 4 Students	\$ 5,000.00
Farmers Market	\$ 5,000.00
TOTAL	\$35,000.00

Commissioner Geitz made a motion to approve the CDBG-CV Grant Fund Allocations at \$35,000.00 for Radius and \$1,709.25 per qualified employee for other applicants for a total of \$131,999.94 and \$5,000.00 for each applicant for the meal program for a total of \$35,000.00. Commissioner Smith seconded the motion. The vote follows: Commissioner Geitz, aye; Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Gilligan, aye; and Mayor Giefer, aye.

**CITY COMMISSION
(Kansas Department of Commerce for Small Cities)
(Community Development Block Grant)
(Lift Station #2 Improvements)
(Public Hearing)**

Assistant City Manager Massey, was recognized and addressed the Governing Body. He stated staff has been working with our CDBG grant administrator to submit an application for a Kansas Department of Commerce for Small Cities Community Development Block Grant sewer project.

Bruce Boettcher, BG Consultants, was recognized and addressed the Governing Body. He stated the project is for improvements to Lift Station #2 and will include the replacement of two flooded suction centrifugal wastewater pumps, valves and piping. The estimated total project cost is \$1,703,200.00 with a grant request of \$700,000.00 and local cost share of \$1,003,200.00. The local share will be utilized from the City of Emporia KDHE-SRF loan. The next step in the application process is to have a public hearing.

Mayor Giefer then opened the public hearing.

As no one in attendance wished to address the Governing Body, Mayor Giefer then closed the public hearing.

**BONDS
(S&S Quality Meats, LLC and Smoots Enterprises, LLC II)
(Approving Option of Purchase 2015 IRB's)
(Resolution Number 3622)**

City Attorney Montgomery was recognized and addressed the Governing Body. She stated this resolution approves the request by Smoots Enterprises II, LLC to exercise the option to purchase the 2015 Series A and B Industrial Revenue Bonds.

Mary Carson, representing Triplett Woolf Garretson, LLC, was recognized and addressed the Governing Body via phone. She stated the 2015 Industrial Revenue Bonds were issued to finance development of the Fanestil refrigerated warehouse and fresh market. This action will allow Smoots Enterprises to proceed with refinancing the IRB's as S & S Quality Meats, LLC. This is clean up the bonds, allow financing through Sunflower Bank and allow the Sunflower Bank first position.

Following further discussion, Commissioner Geitz made a motion to approve Resolution Number 3632 a resolution approving the sale of IRB's; authorizing the execution and delivery of a special warranty deed; a bill of sale; a termination and release of lease, and a satisfaction discharge and release of indenture. Commissioner Gilligan seconded the motion. The vote follows: Commissioner Geitz, aye; Commissioner Gilligan, aye; Commissioner Brinkman, aye; Commissioner Smith, aye; and Mayor Giefer, aye.

BONDS
(S&S Quality Meats, LLC)
(Authorize the Issuance of Taxable Industrial Revenue Bonds)
(Ordinance Number 20-26)

AN ORDINANCE AUTHORIZING THE CITY OF EMPORIA, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REFUNDING REVENUE BONDS, SERIES 2020 (S&S QUALITY MEATS, LLC), IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT EXCEEDING \$1,600,000 FOR THE PURPOSES OF REFUNDING, REDEEMING AND RETIRING THE CITY'S TAXABLE INDUSTRIAL REVENUE BONDS, SERIES A, 2015 AND SUBORDINATED TAXABLE INDUSTRIAL REVENUE BONDS, SERIES B, 2015 ORIGINALLY ISSUED TO FINANCE CERTAIN COMMERCIAL IMPROVEMENTS IN THE CITY ON BEHALF OF SMOOTS ENTERPRISES II, LLC; AUTHORIZING THE EXECUTION OF A TRUST INDENTURE BY AND BETWEEN THE CITY AND SECURITY BANK OF KANSAS CITY, KANSAS CITY, KANSAS, AS TRUSTEE; AUTHORIZING EXECUTION OF A LEASE BETWEEN THE CITY AND S&S QUALITY MEATS LLC; APPROVING THE FORM OF GUARANTY AGREEMENTS; AUTHORIZING THE EXECUTION OF A BOND PLACEMENT AGREEMENT BY AND BETWEEN THE CITY S&S QUALITY MEATS, LLC, AND SUNFLOWER BANK, N.A., AS PURCHASER OF THE SERIES 2020 BONDS AND AUTHORIZING OTHER NECESSARY DOCUMENTS, to which the City Clerk assigned Ordinance Number 20-26, was presented to the Governing Body for their consideration.

Mary Carson, representing Triplett Woolf Garretson, LLC, was recognized and addressed the Governing Body via phone. She stated this ordinance authorizes the City of Emporia to issue taxable Industrial Revenue Bonds, Series 2020 on behalf of S&S Quality Meats, LLC, for the purpose of retiring the City's 2015 taxable Industrial Revenue Bonds to finance commercial improvements on behalf of Smoots Enterprises II, LLC.

Commissioner Geitz made a motion approving Ordinance Number 20-26, an ordinance authorizing the City of Emporia to issue taxable Industrial Revenue Bonds, Series 2020 for the purpose of retiring the City's 2015 taxable Industrial Revenue Bonds to finance commercial improvements on behalf of Smoots Enterprises II, LLC. Commissioner Gilligan seconded the

motion. The vote follows: Commissioner Geitz, aye; Commissioner Gilligan, aye; Commissioner Brinkman, aye; Commissioner Smith, aye; and Mayor Giefer, aye.

**CITY COMMISSION
(Amend Sidewalk Enhancement Policy)
(Resolution Number 3633)**

City Attorney Montgomery, was recognized and addressed the Governing Body. She stated amendments to the City's Sidewalk Enhancement Policy are proposed in order to offer additional options and flexibility for local businesses to request utilization of sidewalks, parking, alleyways and roadways for display of merchandise, goods and wares, and/or the sale, service and consumption of prepared meals and beverages. Applicants will be required to comply with all federal, state and local laws including the Americans with Disabilities Act and alcohol licensing requirements. She stated staff was recommending approval of the Resolution adopting the amendments to the Sidewalk Enhancement Policy.

Commissioner Gilligan made a motion to approve Resolution Number 3633, a resolution amending the Sidewalk Enhancement Policy. Commissioner Smith seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; and Mayor Giefer, aye.

**CITY COMMISSION
(City Manager's Report)**

This is a verbal report that announces upcoming events, recognizes employees for outstanding contribution and provides the public information that may be of a general interest. The following information was presented at the meeting:

At the time this Agenda was prepared, the following items were in the works:

Tentative Agenda for September 9th Study Session

Discuss Contract with RDA.

Discuss Mask Ordinance
Discuss FEMA Flood
Update on CARES/SPARK Funds

EXECUTIVE SESSION

Commissioner Gilligan made a motion to adjourn into Executive Session to discuss proprietary information regarding potential commercial development, and to invite Jim Witt, Special Projects Manager, from 1:50 p.m. to 2:00 p.m., in the City Commission Meeting Room. Commissioner Smith seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; and Mayor Giefer, aye.

Upon reconvening the meeting in Regular Session at 2:00 p.m., this same date, in the City Commission Meeting Room, Mayor Giefer stated they had discussed proprietary information regarding potential commercial development and no action was taken.

EXECUTIVE SESSION

Commissioner Gilligan made a motion to adjourn into Executive Session for consultation with the City Attorney regarding a legal matter, and to invite Jim Witt, Special Projects Manager, and Jim Ubert, City Engineer, from 2:01 p.m. to 2:16 p.m., in the City Commission Meeting Room. Commissioner Geitz seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Geitz, aye; Commissioner Brinkman, aye; Commissioner Smith, aye; and Mayor Giefer, aye.

Upon reconvening the meeting in Regular Session at 2:16 p.m., this same date, in the City Commission Meeting Room, Mayor Giefer stated they had consultation with the City Attorney regarding a legal matter and no action was taken.

EXECUTIVE SESSION

Commissioner Gilligan made a motion to adjourn into Executive Session to discuss potential land acquisition from 2:16 p.m. to 2:25 p.m., in the

City Commission Meeting Room. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; Commissioner Smith, aye; and Mayor Giefer, aye.

Upon reconvening the meeting in Regular Session at 2:25 p.m., this same date, in the City Commission Meeting Room, Mayor Giefer stated they had discussed potential land acquisition and no action was taken.

Commissioner Gillian then made a motion to adjourn. Commissioner Geitz seconded the motion. The vote follows: Commissioner Gilligan, aye; Commissioner Geitz, aye; Commissioner Brinkman, aye; Commissioner Smith, aye; and Mayor Giefer, aye.

Danny Giefer, Mayor

ATTEST:

Kerry Sull, City Clerk